thankful to the heads of AmeriTech, AT&T, the Justice Department, and particularly Anne Bingaman, the Assistant Attorney General for Antitrust.

That is not the case at all. That lady is an astute trial lawyer. She knows her subject and works around the clock and has been working for months on getting this so-called consent presentation to Judge Greene.

I say kudos to Anne Bingaman; the president of AmeriTech; to Bob Laland, the president of AT&T; and I think it was the fellow from the Consumer Federation of America.

The four appeared on television the day before yesterday. What they had was a proposal. They proposed that they move forward, and they had the steps and we looked at our bill. We looked at the steps and they are one and the same.

Why should we delay and palaver on the floor of the Congress when the parties in the particular discipline have all agreed?

Long distance, ARBOCK, Justice Department, Consumer Federation, have all gotten together. We had a real good kickoff. I am particularly indebted to those parties, and particularly the Deputy Attorney General, and to the Department of Justice, in charge of the antitrust.

I see other Senators wishing to be recognized. I yield the floor.

Mr. GLENN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GLENN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICA'S SENSITIVE NUCLEAR TECHNOLOGY

Mr. GLENN. Madam President and colleagues, I rise to speak briefly today about a rather curious development in the history of U.S. efforts to halt the global spread of nuclear weapons.

The hallmark of a good law is its ability to balance elements of permanence and change. A good law offers both fixed compass points and sufficient latitude for tactical navigation.

Our nonproliferation legislation offers no exception to this rule. When our laws and policies apply too much sail or too much anchor, the consequences can be devastating for vital national security interests of the United States.

For example, the notion of timely warning—that is, a legal precondition for certain forms of nuclear cooperation that was placed into the Atomic Energy Act to ensure stringent controls over exported U.S. nuclear materials and technology—has been rendered virtually meaningless by the way various administrations have used this term over the last decade to expedite commercial uses of U.S.-controlled plutonium in other countries.

United States nuclear cooperation with Japan and with members of EURATOM, the European Atomic Energy Community, a region plagued by daily headlines of new black market nuclear deals, are two specific cases where large-scale nuclear cooperation is proceeding without timely warning having been satisfied within the original meaning of the term.

Madam President, I ask unanimous consent to have printed at the end of my remarks an authoritative interpretation of this concept by Dr. Leonard Weiss, who is now the minority staff director of the Governmental Affairs Committee

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GLENN. Another example, Madam President, in 1985, following repeated and flagrant violations of its peaceful nuclear assurances to the United States, Pakistan was required by the Pressler amendment to satisfy a certification requirement before receiving new aid. Specifically, the President had to certify that Pakistan did not possess a nuclear explosive device and that new aid would, as numerous officials from the Reagan administration had asserted, reduce significantly the risk that Pakistan would acquire such a device.

America funneled hundreds of millions of United States taxpayer dollars into Pakistan after 1985, until President Bush finally stopped making the required certifications in 1990.

Throughout that period, both Presidents Reagan and Bush solemnly certified—using an interpretation of the word ''possess'' that would make even the most cynical of our Government's legal advisors blush—that Pakistan did not possess the bomb.

The interpretations of the words ''reduce'' and ''significantly'' were similarly handled, as though they had been inscribed on something like silly putty. They did not mean anything.

Since the aid cutoff in 1990, by the way, we have finally started to see the first signs of some potential nuclear restraint in Pakistan in the form of a freeze on the production of highly enriched uranium.

Oh yes, I almost forgot to mention the $1 billion or so in taxpayer dollars not doled out to Pakistan since 1990 in the name of restraining Pakistan's bomb program. Those funds remain here at home, thanks to the Pressler amendment.

As a footnote to the sad saga of Washington's failure to implement the Pressler sanctions until 1990, however, our Government has since interpreted the ban on assistance as not covering commercial sales of military equipment, including spare parts for Pakistan's nuclear weapon delivery vehicle, the F–16. Even joint military exercises are not regarded as assistance. Once again, a key nonproliferation term has been molded and distorted beyond recognition.

Yet, my remarks today will focus on another term that has found its way into the ''Twilight Zone'' of nonproliferation. I am referring to the term ''sensitive nuclear technology,'' SNT, as it is known, which the Nuclear Non-Proliferation Act very clearly defines as any information, other than restricted data, ''* * * which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water * * *''.

If we look carefully into the United States-Japan agreement for nuclear cooperation, signed in 1987, we will find a clause in there that says the following: ''* * * sensitive nuclear technology shall not be transferred under this Agreement.'' That is article 2–1-b.

Underscoring this provision, the principal negotiator of this agreement, Ambassador Richard Kennedy, testified on December 16, 1987, before the House Foreign Affairs Committee: ''The transfer of restricted data and sensitive nuclear technology under the agreement is specifically excluded.''

Last September, the international environmental group, Greenpeace, prepared a lengthy analysis of the transfers of United States nuclear reprocessing technology to Japan. This study, titled ''The Unlawful Plutonium Alliance: Japan's Supergrade Plutonium and the Role of the United States,'' makes for interesting reading. It presents considerable evidence of United States cooperation with Japan in the areas of plutonium breeder reactors and nuclear fuel reprocessing.

On September 8, 1994, the United States Department of Energy promised a comprehensive review of the report and further stated that it was ''phasing out collaborative research efforts with Japan on plutonium reprocessing and development of breeder reactor technology.''

The same day, the New York Times quoted a Department of Energy spokesman as saying that this cooperation was ''* * * a remnant of the last administration.''

Later, on September 23, Greenpeace was joined by the Natural Resources Defense Council and the Nuclear Control Institute in demanding several steps to restore United States-Japan nuclear cooperation to the constraints of United States law.

Madam President, I ask unanimous consent to have printed in the RECORD a letter by these organizations to Energy Secretary Hazel O'Leary.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GREENPEACE INTERNATIONAL; NUCLEAR CONTROL INSTITUTE; NATURAL RESOURCES DEFENSE COUNCIL,

September 23, 1994.

Hon. HAZEL O'LEARY,
Secretary of Energy, U.S. Department of Energy, Washington, DC.

DEAR SECRETARY O'LEARY: We are writing to you concerning the Department of Energy's current review of its policies and practices with respect to the export of ''sensitive nuclear technology.''

We urge that the Department immediately suspend its July 1986 guidelines for determining whether technology proposed to be transferred to other countries constitutes SNT within the meaning of the Nuclear Non-Proliferation Act. We further request suspension of all cooperation in reprocessing, uranium enrichment, and heavy water technology pursuant to the guidelines, pending the outcome of the SNT review.

On September 8, 1994, in response to a report issued by Greenpeace, ''The Unlawful Plutonium Alliance'', outlining the history of recent transfers of reprocessing technology to Japan, the Department announced that it was undertaking a ''comprehensive review'' of its SNT guidelines. It promised to publish the results of this review within 60 days, or by November 7, 1994. It further stated that it was ''phasing out collaborative research efforts with Japan on plutonium reprocessing and development of breeder reactor technology.''

As outlined in the Greenpeace report, there is no question that any SNT transfers to Japan are unlawful. Indeed, the 1988 agreement for nuclear cooperation between Japan and the United States flatly prohibits such transfers. While the Department, in reliance on its internal guidelines, has sought to justify the transfer of reprocessing technology to Japan on the grounds that it is not SNT, the justification cannot withstand scrutiny. In fact, the Department's July 1986 guidelines—which permit reprocessing technology to be treated as something other than SNT when supplied to a recipient country with a sophisticated nuclear program or where it would duplicate an existing capability (the rationale invoked in the case of Japan)—cannot be squared with the language and intent of the NNPA.

Indeed, taken to its logical extreme, the Department's interpretation would allow reprocessing technology transfers to countries with questionable proliferation credentials. However, contrary to the Department's guidelines, the NNPA mandates strict, statutory controls over this highly sensitive technology wherever it is to be transferred and without regard to the relative nuclear sophistication of the recipient.

Our conclusion mirrors that of the General Accounting Office, which stated in a 1987 report that the Department's interpretation was ''not fully consistent with the intent of the NNPA.'' (GAO, ''Department of Energy Needs Tighter Controls Over Reprocessing Information'', 41 GAO/RCED–87–150, August 1987.)

Likewise, in House hearings held more than eight years ago, Senator Glenn, a principal co-author of the NNPA, characterized the Department's approach to SNT determinations as reflecting a ''willful determination over a period of years to ignore the intent of Congress.'' (Hearing on Nuclear Exports before the Subcommittee on Energy Conservation and Power of the House Committee on Energy and Commerce, 99th Cong., 2d Sess. 4–5, May 15, 1986.) At the same hearing, Congressman Markey called the Department's views ''bizarre'' and underscored. ''In the NNPA, Congress took the view that enrichment, reprocessing and heavy water manufacture are inherently sensitive activities wherever they are located. No latitude is specified in the act because none was intended.'' *Id.* at 3.

We think the legal positions asserted in the Greenpeace report, echoing those of GAO and key members of Congress, are unassailable. We think far too much time has passed during which the Department has ignored the requirements of law and cavalierly condoned unauthorized SNT transfers. While we applaud the Department for undertaking its review, we do not believe that business as usual is appropriate while the review is underway. Indeed, ''business as usual'', when it involves continued violation of the law, is scarcely something that can or should be tolerated by the Department.

We therefore believe it is incumbent upon the Department to take three firm steps during the period of the review. First, it must immediately suspend the 1986 guidelines. Second, independent of the general phase-out of collaborative reprocessing efforts with Japan, it must perforce suspend approvals of any further technology transfers which might involve SNT to any country. Third, Japan and other countries with whom SNT is shared must immediately be advised of the suspension of the 1986 guidelines and cooperation involving SNT. Only by taking these steps can both the NNPA and the review process be the 1986 guidelines and cooperation involving SNT. Only by taking these steps can both the NNPA and the review process be preserved and can the public have adequate assurance that fundamental U.S. non-proliferation law will not continue to be undermined.

Thank you for your consideration of our views. We would appreciate it if you would promptly advise us of how you intend to proceed concerning our request.

Sincerely,

TOM CLEMENTS,
Greenpeace International.
PAUL LEVENTHAL,
Nuclear Control Institute.
CHRISTOPHER PAINE,
Natural Resources Defense Council.

Mr. GLENN. Months later, on December 28, 1994, these groups received a brief reply from the Department of Energy simply asserting that the transfers to Japan were ''permissible exercises of its statutory authorities.''

Madam President, I further ask to have printed in the RECORD a letter from the Director of the Department of Energy's Office of Nuclear Energy communicating DOD's view that it is permissible for the Department ''to consider the quality of technology already indigenous to the country that would receive the export in making the determination that sensitive nuclear technology was in fact proposed to be exported in a given transaction.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF ENERGY,
Washington, DC, December 28, 1994.

Mr. TOM CLEMENTS,
Greenpeace, Inc., Washington, DC.

DEAR MR. CLEMENTS: As you will recall, after receiving Greenpeace's report. ''The Unlawful Plutonium Alliance,'' the Department agreed to review the guidelines it has used since 1986 in determining whether particular proposed exports involve ''sensitive nuclear technology,'' as that term is used in the Nuclear Non-Proliferation Act. In particular, the Department directed its critical scrutiny to the question whether it is legally permissible for the Department to consider the quality of technology already indigenous to the country that would receive the export in making the determination that sensitive nuclear technology was in fact proposed to be exported in a given transaction.

The Department's Office of General Counsel has concluded that consideration of the quality of indigenous technology is permissible in identifying whether sensitive nuclear technology is proposed to be exported in a particular transaction. As a result, the Department has concluded that its determinations with respect to technology exports to Japan were permissible exercises of its statutory authorities.

The Department will codify the overall guidelines it uses to determine which exports should be considered sensitive nuclear technology by December 1995. This decision is consistent with our current practice of codifying statements of general applicability and future effect that implement, interpret, or prescribe law or policy. To begin this process the Department will publish an Advanced Notice of Proposed Rulemaking in the Federal Register by February 1995. The Department will actively seek the public's views about sensitive nuclear technology during the rulemaking process. We encourage your participation.

Sincerely,

TERRY R. LASH,
Director, Office of Nuclear Energy.

Mr. GLENN. In short, because Japan already had demonstrated a capability to separate plutonium, DOE is arguing that our reprocessing technology did not qualify as SNT—even though the technology was not in the public domain, even though the technology was important to a Japanese facility engaged in reprocessing activities, and even though the technology was not classified Restricted Data. In short, the Department is asserting that even though the technology satisfied each and every one of the requisite components of the definition of SNT, the technology transferred to Japan was not SNT.

The Department did, however, indicate that it will soon invite the public's views on this interpretation in a rule making process. By all indications, that should be a lively process indeed.

Madam President, I ask unanimous consent to insert into the RECORD: First, three articles from the trade newsletter, Nuclear Fuel: ''Four-Month Look at SNT Guidelines Yields Three-Paragraph Response,'' January 2, 1995; ''DOE Pressured to Explain Position on Secret SNT Export Guidelines'', October 24, 1994; and ''PNC Argues Against Public Release of RETF-Related Design Information'', October 24, 1994; and second, a January 6, 1995, letter from the three environmental organizations—Greenpeace, NRDC, and NCI—to the Secretaries of Energy and State urging the exclusion of reprocessing technology transfers from any new agreement for cooperation with the European Atomic Community.

There being no objection, the material was ordered to be printed in the RECORD as follows:

FOUR-MONTH LOOK AT SNT GUIDELINES YIELDS THREE-PARAGRAPH RESPONSE

In a pithy three-paragraph letter, a senior DOE official said December 28 that the department is within its legal authority to transfer so-called sensitive nuclear technology (SNT) to other countries if those countries have advanced nuclear programs.

Questions about DOE's export of SNT arose in September when Greenpeace International released a report charging that DOE has for years illegally provided Japan's Power Reactor & Fuel Development Corp. (PNC) with SNT, which PNC has used to research and develop a planned breeder reactor spent fuel reprocessing plant. Greenpeace said such exports violate the Nuclear Nonproliferation Act, which limits such transfers, and the 1987 U.S.-Japan Peaceful Nuclear Cooperation Agreement, which specifically bars them (NF, 12 Sept '94, 12).

DOE promised to review the Greenpeace report, ''prepare a comprehensive response'' and ''analyze the guidelines used in determining whether nuclear technology transferred to other countries is (SNT) which would be subject to export controls under the Nuclear Nonproliferation Act.''

DOE said it would ''make public the results of the comprehensive review within 60 days'' (by November 7), but a lengthy legal analysis added 51 days to the review, culminating in the one-page, three paragraph response faxed to Tom Clements, U.S. coordinator of Greenpeace's plutonium campaign, at 5:30 p.m., December 28.

The letter from Terry Lash, director of DOE's Office of Nuclear Energy, provides no details on how DOE concluded that the exports to Japan are permissible, but rather merely restates DOE's position that SNT export guidelines, prepared by DOE in 1986, permit such exports if a country has an advanced nuclear capability.

Greenpeace and other environmental groups have argued that the guidelines themselves are unlawful because SNT is SNT, regardless of the capabilities of the country that receives it.

In September, a Greenpeace-sponsored legal analysis of the guidelines concluded that DOE ''is not free to designate the same technology as SNT for some recipients and not for others.''

DOE clearly disagrees with that analysis, but has provided nothing to back up its rationale and apparently doesn't intend to. Asked specifically if DOE plans to provide additional information on how it concluded that it had not violated the NNPA or the U.S.-Japan agreement. DOE's Ray Hunter said: ''There is nothing more intended to come out.'' The ''comprehensive review'' DOE promised in early September ''is reflected in that letter'' to Clements, he said.

Clements told NuclearFuel December 29 that DOE claims to have no written record of its legal analysis, even though Lash noted in his letter that the department ''directed its critical scrutiny'' to the question of whether ''it is legally permissible'' to consider a recipient country's level of nuclear expertise when determining whether SNT is involved in a proposed transaction.

Having concluded—without further explanation—that the SNT guidelines are legal. DOE has further concluded that ''its determinations with respect to technology exports to Japan were permissible exercises of its statutory authorities.'' The letter offers no insight as to which ''statutory authorities'' the department's lawyers considered in their lengthy deliberations over the SNT designation issue.

Lash said the department will codify the overall guidelines it uses to determine which exports should be considered SNT by December 1995. He invited Clements to participate in the rulemaking process, which will begin in February when DOE publishes an advanced notice of proposed rulemaking.

TOTALLY INADEQUATE

''We obviously view this as totally inadequate,'' Clements told NuclearFuel, ''and we will continue to legally challenge DOE on this.''

In a press release, Clements said DOE ''has failed in the extreme to conduct the thorough review promised of its 'sensitive nuclear technology' export policy. The DOE determination to leave its SNT export policy in place has no basis in law and stands in contradiction to stated U.S. policies aimed at halting the proliferation of plutonium.''

Greenpeace and the Nuclear Control Institute (NCI), which have long fought breeder reactor technologies and the separation and use of plutonium, also maintained that DOE's response was contrary to opinions by the U.S. General Accounting Office, Sen. John Glenn (D-Ohio) and Rep. Edward Markey (D-Mass.).

''DOE's conclusion creates a massive loophole in the U.S. nuclear nonproliferation regime, which is particularly disturbing in light of the current renegotiation of the U.S. nuclear agreement with the European Atomic Energy Community (Euratom),'' added NCI Deputy Director Daniel Horner.

NCI and Greenpeace are concerned that DOE may be laying the foundation for a new deal with Euratom which would allow virtually unfettered cooperation in plutonium reprocessing technology.

Clements was also disturbed by the way DOE released the letter to him. According to Clements, DOE provided PNC and at least one nuclear industry official with a copy of the December 28 letter before sending it to him.

''The timing of the release of the letter was contrary to openness policies of DOE and we are perturbed that DOE continues to conduct the public's business in this slipshod way,'' he said.

DOE PRESSURED TO EXPLAIN POSITION ON SECRET SNT EXPORT GUIDELINES

DOE critics are pressing the department to explain how and why it adopted export guidelines that allowed the transfer of nuclear technology that would otherwise be barred under U.S. law.

The export guidelines adopted by DOE in July 1986 without any public notice, allow the transfer of so-called Sensitive Nuclear Technology (SNT) if a recipient country has an advanced nuclear program.

The guidelines became an issue last month after Greenpeace International released a report charging that DOE—relying on the guidelines—has for years provided Japan with SNT, in violation of the 1978 Nuclear Nonproliferation Act and the 1987 U.S.-Japan Peaceful Nuclear Cooperation Agreement (NF, 12 Sept., 12).

Critics charge that the guidelines, and the exports made under them, violate the nonproliferation law and the U.S.-Japan agreement because the law and the pact define SNT strictly by the information and technology involved, making no distinction on the recipient.

The day Greenpeace issued its report, DOE conceded that information and technology provided to Japan under a 1987 collaborative arrangement with Japan's Power Reactor & Fuel Development Corp. (PNC) ''may be considered'' SNT if provided to a country with a less-developed nuclear program than Japan's.

The department is analyzing the 1986 guidelines and is supposed to make public the results of its review around November 8. However, sources say that date may slip because the DOE review is disorganized and might be folded in broader review of how the department handles surplus material.

Late last month, Greenpeace, the Nuclear Control Institute and the Natural Resources Defense Council jointly urged suspension of the 1986 guidelines and of ''all cooperation in reprocessing, uranium enrichment, and heavy water technology pursuant to the guidelines,'' pending the outcome of the review.

In a separate six-page letter, dated October 11, Rep. Edward Markey (D-Mass.) urged a similar suspension of the guidelines and ongoing cooperative agreements. He also asked detailed questions about who devised the 1986 guidelines and whether agencies other than DOE signed off on them.

Markey wants to know who were the principal authors of the SNT guidelines and why they were not promulgated in a formal, open process as agency rulemaking. He also wants to know who was the highest ranking DOE official to approve the guidelines and whether DOE did a legal analysis to determine whether the guidelines were consistent with the Nuclear Nonproliferation Act and other applicable law. As of October 20, DOE had not responded to the queries and had not suspended the guidelines.

PNC ARGUES AGAINST PUBLIC RELEASE OF RETF-RELATED DESIGN INFORMATION

DOE's use of controversial, secret guidelines to sanction export to Japan of information and hardware that would otherwise be considered sensitive nuclear technology (SNT) has put the department in a bind over how to respond to a year-old Freedom of Information Act (FOIA) request.

The FOIA, filed in October 1993 by Greenpeace's Tom Clements, requests information concerning technology and information transferred to the Japanese Power Reactor & Nuclear Fuel Development Corp. (PNC) from DOE's Oak Ridge National Laboratory under contract with PNC.

Specifically, Clements has asked for copies of the design of a fuel disassembly system which Oak Ridge delivered to PNC for use at its Recycle Equipment Test Facility Fuel (RETF), a breeder reactor spent fuel reprocessing plant.

For more than a year, DOE has balked at releasing the design information and, for at least six months, the department has been consulting with PNC on the issue.

Clements has argued that if the information provided to PNC was not SNT—and DOE insists it wasn't—then it should be publicly available.

The 1987 U.S.-Japan Nuclear Cooperation Agreement, which bars the transfer of SNT, defines SNT as ''data which are not available to the public and which are important to the design, construction, fabrication, operation or maintenance of enrichment, reprocessing or heavy water facilities. . . .''

DOE determined that this and other information and equipment transferred to PNC for use in its breeder reactor program is not SNT because export guidelines, adopted by the department in July 1986 without any public exposure, allow the transfer of what would otherwise be deemed SNT if a recipient country has an advanced nuclear program.

The guidelines became an issue last month after Greenpeace International released a report charging that DOE has for years provided Japan with SNT, in violation of the 1978 Nuclear Nonproliferation Act and the 1987 U.S.-Japan agreement (NF, 12 Sept., 12).

In April and again July, DOE told Clements that the department had asked the Japanese for comments on the FOIA request.

A July 25 letter from Terry Lash, director of DOE's Office of Nuclear Energy, informed Clements that PNC had ''recently'' assured DOE that the Japanese company's comments would be sent ''in the near future.''

On September 20, following another Clements' inquiry on the status of his FOIA request, Lash advised that the Washington, D.C. law firm of Lepon, McCarthy, White & Holzworth, ''acting for PNC, has provided DOE with a lengthy, detailed legal argument opposing the release of this information to Greenpeace.''

DOE's Office of General Counsel is reviewing the letter, Lash said. Contacted by NuclearFuel, neither the law firm nor PNC would provide a copy of the legal argument or discuss the arguments made.

Clements has argued that, while he is interested in whatever the Japanese might have to say about his request ''their opinion should be of no concern regarding the release of the information to me.'' DOE has taken the position that no SNT was transferred, Clements has noted. Any other information transferred ''should be publicly available.''

NUCLEAR CONTROL INSTITUTE; GREENPEACE INTERNATIONAL; NATURAL RESOURCES DEFENSE COUNCIL,

January 6, 1995.

Hon. HAZEL R. O'LEARY,
Secretary of Energy, U.S. Department of Energy, Washington, DC.

Hon. WARREN CHRISTOPHER,
Secretary of State, U.S. Department of State, Washington, DC.

DEAR SECRETARIES O'LEARY AND CHRISTOPHER: In view of certain recent determinations by the Department of Energy with respect to the identification of ''sensitive nuclear technology'' (''SNT'') in export transactions, we are writing to urge that it be made crystal clear in any new agreement for cooperation with the European Atomic Energy Community (''EURATOM'') that transactions involving reprocessing technology are prohibited. As explained below, failure plainly to bar such transactions would run directly counter to the Administration's expressed non-proliferation policy.

As you know, Section 123a.(9) of the Atomic Energy Act, 42 U.S.C. §2153(a)(9) (the ''Act''), requires that, as a precondition to SNT transfers, agreements for cooperation contain ''a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection. . .'' including, among other things, full-scope safeguards, adequate physical security and U.S. approval of retransfers. Absent such a guaranty, under the terms of Sections 127 and 128 of the Act, 42 U.S.C. §2156, 2157, no SNT may be exported from the United States to the nation or group of nations in question. Further, under the Department of Energy's regulations, 10 CFR Part 810, technology transfers involving SNT are prohibited unless the Section 127 and 128 requirements are met.

In 1987, the United States determined that no SNT transfers would be permitted under the U.S.-Japan agreement for nuclear cooperation. The U.S.-Japan agreement therefore does not contain the provision required by Section 123a.(9) of the Act. Instead, Article 2(1)(b) provides, ''[S]ensitive nuclear technology shall not be transferred under this Agreement.'' Because SNT is defined in Section 4(a)(6) of the Nuclear Non-Proliferation Act of 1978 (Pub. L. No. 95–242) generally to cover non-public information ''important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water,'' it was understood at the time by observers outside the Executive Branch, including ourselves and, to our knowledge, the responsible Congressional oversight committees, that reprocessing technology transfers to Japan would be prohibited.

As it has turned out, this understanding was not shared by the Executive Branch. Under an internal Department of Energy guideline, adopted in 1986, the Department permitted itself to determine whether certain information constituted SNT in part based upon the ''level of expertise of the information recipient.'' In fact, at the time the U.S.-Japan agreement was under consideration in Congress, Oak Ridge National Laboratory (''ORNL'') was transferring reprocessing technology to Japan, based upon a determination that it was not ''SNT' when delivered to a such a sophisticated nuclear nation.

In our view, the Executive Branch misled Congress in 1987 and 1988 into believing that reprocessing transfers were not possible under the ''no-SNT'' provision of the U.S.-Japan agreement at the very time such transfers were already underway. We have since established by means of a Freedom of Information Act request that the Department of State has been briefed by the Department of Energy on the ORNL transaction well in advance of the State Department's testimony in Congressional hearings that no SNT could be transferred to Japan under the terms of the new agreement.

Given the high level of expertise in Japan with respect to reprocessing technology, the Department has proceeded over the past half-dozen years to authorize numerous transfers of such technology to Japan. These transfers have been carried out pursuant to a Department of energy guideline which was, in our view, improperly adopted in secret in the first instance, without public notice or opportunity for comment. The SNT prohibition in the U.S.-Japan agreement has thus effectively been rendered a nullity.

The DOE guideline clearly violated the expressed language of the statute and led to absurd results. Moreover, DOE's interpretation has been rejected as having no basis in law by the chairmen of two Congressional oversight committees with jurisdiction over nuclear exports and by the General Accounting Office, which reviewed DOE's nuclear-export performance and concluded that ''DOE made [SNT] determinations . . . on the basis of factors that are not included in the 1978 act,'' and that ''DOE needs standards for identifying sensitive nuclear technology that are consistent with the 1978 act.''

This fall we raised what we believe are serious concerns about the legality of the Department of Energy's interpretation. In response, the Department promised a ''comprehensive review'' of the entire issue of the lawfulness of its guidelines. However, in a three paragraph letter dated December 28, 1994, not supported by any public, background analysis, the Department rejected our contentions. Instead, it concluded that ''consideration of indigenous technology is permissible in identifying whether sensitive nuclear technology is proposed to be exported in a particular transaction.'' On that basis, the Department then further concluded that its ''determinations with respect to technology exports to Japan were permissible exercises of its statutory authorities.''

We continue to believe that the Department of Energy's conduct was wrong as a matter of law. However, without awaiting resolution of the legal issue, we believe that the policy issues presented by the Department of Energy's conclusions need to be addressed immediately and unequivocally in the context of the U.S.-EURATOM negotiations. Indeed, it is essential that the misapprehensions which attended the U.S.-Japan agreement be avoided in the case of EURATOM.

In his September 27, 1993 Policy Statement on Nonproliferation and Export Control Policy, President Clinton categorically states that the United States ''does not encourage the civil use of plutonium. * * *'' While he also referred to his decision to ''maintain its existing commitments regarding the use of plutonium in civil nuclear programs in Western Europe * * *,'' whatever those commitments are they cannot survive the term of our existing agreement with EURATOM, which expires at the end of December, 1995.

In our judgment, any transfer of reprocessing technology, whether determined to be SNT or not, would involve the encouragement of civil use of plutonium, contrary to the Administration's policy. It is in fact presumably for such reasons that the Department of Energy stated in September, 1994, that it was ''phasing out collaborative research efforts with Japan on plutonium reprocessing. * * *''

The need to curtail any future reprocessing transfers to EURATOM is of particular importance. EURATOM is a conglomerate consisting of numerous countries which have quite different degrees of nuclear sophistication. Twenty years hence it could be even more variegated, perhaps stretching from the Atlantic to the Urals, presenting proliferation and terrorism risks that may vary dramatically from member state to member state. Yet, because the United States treats EURATOM as a single entity under the Act, U.S. nuclear materials, technology and facilities will be able to move freely from state to state within the Community. We think it critical in such circumstances that any new nuclear cooperation agreement with EURATOM leave no doubt that cooperation on the civil use of plutonium will not be permitted.

The United States must act consistently with the President's non-proliferation policy in the context of any new EURATOM agreement. This consistency of action means that whatever approach the Department of Energy may ultimately take in its promised rulemaking on SNT transfers, there should be an explicit prohibition on the transfer of any non-public and/or proprietary technology, whether or not designated as SNT, relating in any way to reprocessing. In this way, the type of controversy which has attached to reprocessing technology transfers to Japan would not arise, administrative interpretation would not be allowed to undercut non-proliferation law and policy, and the Congress and the public would have full and complete assurance that the policy of not encouraging plutonium use would be implemented in a consistent and comprehensive manner.

Thank you for your consideration of our views.

Sincerely,

PAUL LEVENTHAL,
Nuclear Control Institute.
TOM CLEMENTS,
Greenpeace International.
CHRISTOPHER PAINE
Natural Resources Defense Council.

Mr. GLENN. Madam President, my own views on this whole issue are well known. On May 15, 1986, Congressman

MARKEY chaired a hearing of the House Subcommittee on Energy Conservation and Power to assess the effectiveness of DOE controls over nuclear technology exports. The hearing focused in particular on findings of a report by the General Accounting Office documenting several problems in DOE's controls. I testified that ''GAO's documentation of examples where obvious exports of sensitive nuclear technology were covered up by DOE through twisted reasoning allowing determinations that no sensitive nuclear technology was involved, suggests a dangerous attitude of contempt for law on the part of some DOE officials.'' That was clear back in 1986.

The GAO report that was the focus of that hearing was entitled, ''DOE Has Insufficient Control over Nuclear Technology Exports'' (RCED–86–144) and was dated May 1, 1986—about 9 years ago. That same report reached the following specific conclusions—

DoE has not established objective standards for specifically authorizing exports [of nuclear technology] (page 2).

The 1978 act [the Nuclear Nonproliferation Act (NNPA)] . . . limits the determination of sensitive nuclear technology to its importance to sensitive facilities, not to recipient countries. (page 4)

In defining SNT, neither the act nor its legislative history distinguished among countries, their nuclear weapons capabilities, or their nonproliferation credentials. The act requires DoE to determine if information to be provided to a foreign country is important to the design, construction, fabrication, operation, or maintenance of an enrichment, reprocessing, or heavy water production facility. (page 57)

In our opinion, therefore, the better view is that the NNPA requires DoE to make SNT determinations strictly on the basis of the technical importance of proposed assistance to sensitive nuclear facilities. (page 58)

On August 17, 1987, GAO issued another report, entitled, ''Department of Energy Needs Tighter Controls Over Reprocessing Information' (RCED–87–150). This report found that ''DOE has little control over the dissemination of information related to the design, operation, and maintenance of commercial or defense reprocessing technology that it produces * * * [adding that] most of DOE's reprocessing-related information is readily available to anyone who wants it.'' That was on page 17. Here are some additional findings from that report—

DoE has not enforced the SNT export conditions on activities in conducts with foreign countries under technical exchange agreements. (page 33)

DoE's interpretation [of SNT] * * * does not appear consistent with the NNPA definition of SNT. (page 33)

DoE has not fully met NNPA conditions for transferring SNT on any of the cooperative reprocessing activities with other countries. (page 39)

* * * prior approval rights required by the act were not obtained on any of the cooperative reprocessing activities [specifically the UK and Japan].'' (page 39)

[DoE officials] believe that although the information [transferred to the UK and Japan] is 'valuable,' it is not 'important' in the sense intended by the NNPA and is, therefore, not SNT. (page 40)

Neither the definition [of SNT in the NNPA] nor the export requirements [under existing regulations] indicate that SNT decisions were to be based on the nuclear proficiency of the recipient country. (page 41)

Neither the act [NNPA] nor its legislative history distinguishes among countries, their nuclear capabilities, or their nonproliferation status to determine what information constitutes SNT * * * this definition should be consistently applied to all countries on the basis of objective criteria. (page 42)

The assistance DoE provides directly to the reprocessing programs of other countries * * * qualifies in our opinion as SNT as defined in the NNPA. (page 43)

In March 1988, DOE's own Office of International Security Affairs issued a lengthy report on Technology Security (DOE/DP–8008612) which found that ''Success in acquiring unclassified sensitive technology, as identified in the Militarily Critical Technologies List, has enabled potential proliferant countries to construct, outside of the international safeguards regime, sensitive fuel cycle facilities at lower costs and in shorter period of time'' (page 9–2).

Then on September 19, 1989, the GAO issued another report entitled ''Better Controls Needed Over Weapons-Related Information and Technology'' (RCED–89–116), which found that ''DOE makes readily available a great deal of unclassified information and computer codes that could assist sensitive countries in developing or advancing their nuclear weapons programs'' (page 16). GAO also found that ''In addition to obtaining DOE information, sensitive countries routinely obtain hardware from the United States that has both nuclear weapons and commercial applications * * * about 290 of the approved requests [for export licenses in 1987] were destined for facilities suspected of conducting nuclear weapons development activities'' (page 5).

With respect to exports of these so-called dual-use goods, GAO's 1987 data amount to peanuts compared with what GAO found in 1994. In a report bearing a now-familiar title, ''Export Licensing Procedures for Dual-Use Items Need to be Strengthened,'' (NSIAD–94–119), GAO found that the United States approved over 330,000 licenses for exports of nuclear dual-use goods worldwide between fiscal years 1985 and 1992. Even more alarming, some $350 million of such goods went specifically to facilities believed to be involved in nuclear weapons-related activities in eight controlled countries. For further discussion of this GAO report, readers should consult my floor statement on January 4, 1995, where I inserted into the RECORD detailed summaries of this report and another report prepared by four inspectors general describing serious problems in the implementation of U.S. export controls relating both to munitions and to goods relating to weapons of mass destruction.

Fortunatly, DOE is now under new leadership and appears to be trying to grapple with bringing DOE practices back into line with the spirit and letter of our fundamental nonproliferation legislation.

I compliment Hazel O'Leary for the job she is doing there as the Secretary of Energy.

In light of President Clinton's September 27, 1993, policy statement that the United States ''does not encourage the civil use of plutonium,'' I hope that the Department's three-paragraph letter does not represent the administration's final position on this matter. I would urge DOE in the strongest of terms to undertake a truly comprehensive reexamination of its policies and practices for handling such data and to bring these policies and practices back into line with U.S. law.

The United States is not in the business of promoting commercial uses of plutonium or highly enriched uranium around the world, either as a matter of policy or of law. The bizarre notion that just because a country has demonstrated a national capability to separate plutonium or perform some other sensitive nuclear activity does not, should not, and must not exempt it from provisions of our law addressing sensitive nuclear technology. Indeed, if this notion continues to poison our nonproliferation laws, what would keep our weapons labs or their subcontractors from transferring SNT to virtually any proliferant nation, given the capabilities that many of them have already demonstrated in the fields of reprocessing, enrichment, and heavy water production? If today such technology can go to Japan in direct violation of a bilateral agreement, where will such technology go tomorrow?

I will closely monitor developments in this area in the months ahead and am optimistic that the Department will eventually bring its practices into line with statutory controls over SNT. This will be a splendid opportunity for the Department to distance itself from the time-dishonored practice of previous administrations of redefining key nonproliferation terms to pursue short-term political or diplomatic goals.

I will close this statement by attaching a chronology of some relevant documents pertaining to this whole SNT controversy, and I ask unanimous consent that it be printed in the RECORD, and I urge all my colleagues to look into this matter and to support retaining some consistency, predictability, and clarity in the implementation of one of our most important nonproliferation controls.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHRONOLOGY OF RELEVANT DOCUMENTS

1/6/95: Letter from Greenpeace/National Resource Defense Council/Nuclear Control Institute to the secretaries of Energy and State.

12/28/94: Letter from Terry Lash (DoE/Nuclear Energy) to Greenpeace.

11/9/94: Letter from Sec. Hazel O'Leary to Sen. John Glenn re DoE handling of reprocessing technology.

11/3/94: Letter from Greenpeace/Nuclear Control Institute to Sec. O'Leary.

10/11/94: Letter from Cong. Edward Markey to Secretary O'Leary.

9/23/94: Letter from Greenpeace/National Resource Defense Council/Nuclear Control Institute to Sec. O'Leary.

9/9/94: NY Times quotes DoE spokesman Michael Gauldin on past US plutonium reprocessing cooperation with Japan: Gauldin terms such cooperation ''* * * a remnant of the last Administration.''

9/8/94: DoE Press Release on recent Greenpeace study states that ''The Department of Energy takes Greenpeace's concerns seriously,'' that DoE ''is phasing out collaborative research efforts with Japan on plutonium reprocessing and development of breeder reactor technology,'' and that DoE will ''thoroughly review the Greenpeace study and prepare a comprehensive response.''

9/8/94: Greenpeace releases ''The Unlawful Plutonium Alliance.''

9/29/94: Legal memorandum to Greenpeace by Eldon Greenberg.

8/3/94: O'Leary memorandum to DoE field offices states that ''the President's nonproliferation policy of September 1993, which discourages civil reprocessing, must be integrated into Department of Energy property control and management practices.''

7/25/94: Letter from Terry Lash to Greenpeace.

6/19/89: GAO issues report, ''Better Control Needed over Weapons-Related Information and Technology.''

3/88: DoE/OISA issues study on technology security which finds that existing regulations ''do not adequately protect unclassified sensitive technology from disclosure and foreign access.''

8/17/87: GAO issues report, ''DoE Needs Tighter Controls over Reprocessing Information.''

1/12/87: DoE concludes agreement with Japanese PNC enterprise regarding breeder reprocessing cooperation.

7/86: DoE issues internal document on guidelines for implementing SNT controls.

5/15/86: Cong. Ed Markey chairs hearing on ''Nuclear Exports: The Effectiveness of Department of Energy Controls Over the Export of Nuclear-Related Technology, Information, and Services.''

5/1/86: GAO issues report, ''DoE Has Insufficient Control over Nuclear Technology Exports.''

EXHIBIT 1

THE CONCEPT OF ''TIMELY WARNING'' IN THE NUCLEAR NONPROLIFERATION ACT OF 1978

INTRODUCTION

In 1984, the first major shipment was made of plutonium separated from U.S.-origin spent fuel to a non-weapon state (Japan) since passage of the Nuclear Nonproliferation Act of 1978 (NNPA) (1). Approval of the shipment had been given by the Secretary of Energy, with the concurrence of the Secretary of State, who was required by the NNPA to determine whether the retransfer of this plutonium from France (where the reprocessing of spent fuel took place) to Japan would result in a ''significant increase of the risk of proliferation . . .'' in which the ''foremost'' factor was whether the United States would receive ''timely warning'' of a diversion of the material.

Footnotes at end.

In accordance with procedures adopted pursuant to the NNPA, the interagency discussions of the Japanese request for approval of the shipment involved the Nuclear Regulatory Commission (NRC). Although the NRC concurred with the finding that the shipment would not result in a ''significant increase of the risk of proliferation,'' the Commission questioned whether the Departments of Energy (DOE) and State had followed Congressional intent in arriving at their conclusion that the ''timely warning'' test had been met. The NRC's position was summarized by NRC Chairman Nunzio J. Palladino as follows: (2)

''(T)he Commission's disagreement with DOE's position is focused on whether or not non-technical factors are permitted to be considered in connection with reaching any conclusions on the existence of timely warning. In the Commission's view, the legislative history of the Nuclear Non-proliferation Act of 1978 (NNPA) indicates that Congress intended timely warning to be essentially a technical matter involving such factors as safeguards measures applied to the material and the technical ease of incorporating the material into a nuclear explosive device. Other, non-technical factors were to be considered relevant only in connection with making the overall statutory finding of no significant increase in the risk of proliferation. A close reading of the statutory language in Section 131 b. of the Atomic Energy Act would seem to support the Commission's interpretation regarding timely warning, particularly since otherwise it would be necessary to consider the same non-technical factors both in connection with the timely warning analysis and in connection with the overall ''increase in the risk of proliferation'' finding. The attachment to this letter lists the more significant technical factors that the Commission believes affect timely warning, and that should be addressed in a classified supplement to future DOE analyses of subsequent arrangements.''

The resolution of this issue will set a precedent with possibly profound future implications for U.S. national security and foreign relations.

The DOE/State conclusion on ''timely warning'' was not accompanied by a detailed supporting analysis. Rather, as indicated in the NRC letter, the conclusion was claimed to result from the presence of certain favorable political factors surrounding the U.S./Japan relationship. Subsequent inquiry (3) has revealed that DOE and State interpret the NNPA as saying that political factors, such as the nature and condition of the governmental system and nonproliferation policies in a recipient country, independently of the technical capabilities of that country, could be determining factors in judging whether the U.S. would receive ''timely warning'' of a diversion. Therefore, according to this view, some political factors, which determine the ''inherent risk of proliferation'' (4) in a country, could determine that ''timely warning'' was available, and these and other political factors could be used to determine that there was ''no significant increase in the risk of proliferation'' stemming from a proposed retransfer for reprocessing or return of plutonium. Further, it is claimed that there was no stated or implied legislative requirement for a supporting analysis of the DOE/State ''timely warning'' conclusion or the weight given to the latter in relation to other factors in determining proliferation risk.

It is the purpose of this paper to show that the DOE/State position is not in keeping with the legislative history of the NNPA or any other indication of Congressional intent. Rather, we shall show that; (a) the Congressional intent was to separate and independently weigh the ''timely warning'' test from the set of possibly counterbalancing political factors listed in the NNPA as being pertinent to an overall judgment as to whether a proposed retransfer would result in a significant increase of the risk of proliferation; and, (b) that Congress meant the ''timely warning'' test to compare the time needed by the U.S. to effectively react to a diversion of nuclear material to the time needed by the diverting country to produce an explosive device, the latter time being estimated by technical assessments only. By this view, a political assessment based on specific political factors could result in approval of a retransfer request even if the ''timely warning'' test fails, but then the burden is on the political assessment to show that such political factors override ''foremost'' consideration of the technical capabilities of the recipient country to make a nuclear explosive device quickly from diverted materials.

I. The Language of the Act

The key paragraph, Section 131b (2) of the Atomic Energy Act of 1954 (Section 303a of the NNPA of 1978) states that,

''. . . the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978 or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device. . . .''

This language was originally offered by Senator Glenn to the Administration during negotiations prior to the beginning of markup of the NNPA by the Subcommittee on Arms Control, Oceans, and International Environment of the Senate Foreign Relations Committee on September 14, 1977. It was a substitute for proposed language by the Administration that would have replaced the ''timely warning'' criterion with consideration of ''the probability of timely warning'' as one (not ''foremost'') factor among many in determining whether to approve a retransfer request. We shall examine this markup in more detail later on. For now it suffices to note that the Subcommittee approved the Glenn language and ignored the Administration's proposal.

Following the markup by the full Committee (there were two earlier markups by the Committees on Governmental Affairs and Energy and Natural Resources), the legislation was reported out and a report filed which contained the following statement on the meaning of ''timely warning'' (5):

''* * * the standard of 'timely warning' * * * is strictly a measure of whether *warning of a diversion* (emphasis added) will be received far enough in advance of the time when the recipient could transform the diverted material into an explosive device to permit an adequate diplomatic response.''

The Senate bill language was accepted by the House on the grounds that there were no substantive differences between the Senate bill and one passed by the House some months earlier. Representative Zablocki (D-Wisconsin), the floor manager for the House bill, while offering a resolution on February 23, 1978, directing the Clerk of the House to make certain technical corrections in the NNPA, made the following observation about

the Senate amendments (6): ''The House reviewed these and found the amended Senate version to be, in all essential respects, consistent with (the House Bill). Upon reaching this judgment, the House, by unanimous consent then moved to recede and accept (the House Bill) as amended.'' Indeed, on February 9, 1978, when Representative Zablocki received unanimous consent to bring up the Senate bill and successfully proposed its passage by voice vote, he stated (7):

''All of the central elements of the House bill—including the important ''timely warning'' criterion—were faithfully preserved. * * * On the critical issue of timely warning, I am pleased to say that the Senate's legislative history was indeed consistent with our own.''

The concept of ''timely warning'' was explained in the House report as follows (8):

'''Timely warning' has to do with that interval of time that exists between the detection of a diversion and the subsequent transformation of diverted material into an explosive device.''

Despite Representative Zablocki's clear statement, the Senate Report's phrase ''warning of a diversion'' as opposed to the House Report's ''detection of a diversion'', along with some additional Senate report language has been used by some in State/DOE to bolster a claim that the intent of the Senate on the meaning of ''timely warning'' was substantially different from that of the House.

We shall show that such a claim is logically unsupportable.

II. A Precise Reformulation of the Timely Warning Issue

Thee are four time intervals associated with the notion of ''timely warning'' to the U.S. of a diversion by country ''X''. For purposes of explanation, we define them as follows.

Reaction Time: The amount of time needed to fashion an appropriate and effective diplomatic response to prevent diverted material from being converted by country ''X'' into an explosive device. Reaction time is a function of bilateral and multilateral relationships and, therefore, involves a political assessment.

Conversion Time: The time needed by country ''X'' to convert diverted material into an explosive device. (Note: Conversion time is a function of the industrial and bomb-making infrastructure in country ''X'', the nature of the diverted material, and the availability of any technology needed to process the diverted material into weapons-usable form. A technical assessment of country ''X''s capabilities would yield an estimate of conversion time, and no political factors are involved.)

Detection Time: The time between diversion of material and either the last detection of the diversion by the safeguards system or the earlier prediction of diversion through intelligence information. (In the latter case, detection time is a negative quantity, and may depend upon observations of political changes in country ''X''. Note that if we tacitly assume that the safeguards system works as designed, no political factors enter into an estimate of positive detection time. Quality of safeguards is then measured by the value of positive detection time, with smaller values indicating better safeguards.)

Warning Time: The interval between the time when the U.S. learns a diversion has occurred or may occur and the time at which country ''X'' is capable of producing a nuclear explosive device following the aforementioned diversion of material. (Thus, warning time = conversion time − detection time. It is important to note that warning time involves political as opposed to technical assessments only when detection time is negative.)

In terms of the above definitions, the concept of ''timely warning'' in the NNPA becomes as follows:

Definition: The U.S. has received ''timely warning'' of a diversion by country ''X'' when warning time is greater than reaction time.

The only thing remaining in order to show equivalence with the statutory concept is to make the connection between some auxiliary concepts in the Senate report with the terminology in this paper.

The phrase ''warning time required'' in the Senate report as in, ''The amount of warning time required will vary (and cannot be defined in terms of a certain number of weeks or months) . . .'', (9) refers to what is here called ''reaction time''. Thus, if a multinational response is needed for effective diplomacy, a quicker reaction time can be expected in the event that the diverted material was multinationally owned or came from a multinational plant, since all the parties in that venture would have reason to feel aggrieved by the diversion.

The phrase ''time . . . available'' as in ''. . . it will be necessary to determine how much time be actually (sic) available under any specific circumstances,'' (10) refers to what we are calling here ''warning time''.

The State/DOE position boils down to the claim that Congress did not intend the ''timely warning'' criterion to involve, on either side of the inequality in the above definition, a quantity estimated only on the basis of a technical assessment.

Since ''reaction time'' clearly involves political factors, and ''warning time'' can involve political factors, there appears, superficially at least, to be some merit to the State/DOE argument. On closer examination, however, the apparent merit vanishes.

We reiterate that ''warning time'' may involve political factors *only* when ''detection time'' is negative. The key observation to make is to note that detection time can be negative only in two situations: 1) Either the U.S. has learned of plans for (or suspects) diversion at a time prior to the time of actual retransfer (in which case the approval of retransfer is denied or revoked and there is no problem), or 2) There is a significant interval of time after the retransfer occurs before a diversion is achieved. In this case it can be argued that the clock marking off warning time could be triggered by observed changes in the political character of the government of country ''X''. But there is nothing in the Senate or House floor debate or report language or in the statute language that suggests making an assumption of existence of a significant time interval between retransfer and diversion, or equivalently, to assume that a significant change had occurred on the meaning of timely warning by the time the final version of the NNPA was passed by the Senate on February 7, 1978, and by the House two days later without further amendment.

To show this, we provide a detailed history of the Congress' consideration of the timely warning issue during its deliberations on the NNPA.

III. The Senate Legislative Markup Record on Timely Warning

Committee markup records, which are uncorrected and not publicly filed, and therefore not readily available to the rest of the Congress, are usually given little or no weight in legal determinations of congressional intent on legislation. Nonetheless, they may, in conjunction with the committee report on the legislation and the floor debate, give some clue as to the meaning of certain legislative provisions when such meaning is otherwise obscure.

The DOE/State defense of its position on ''timely warning'' in the NNPA apparently includes a claim that the Congressional interpretation of the statutory language at the time of passage reflected the Carter Administration's view as expressed in a formal communication from the State Department to the Senate Foreign Relations Committee (see (4)). Since the only place in the legislative history of the NNPA where the Administration's position on ''timely warning'' is substantively discussed by Senators occurs in the Senate Foreign Relations Committee markups (11), (12), (13) of the legislation, we consider these (uncorrected) markup records in examining the DOE/State claim.

On September 14, 1977, at the Foreign Relations Subcommittee markup (see (11)) Senator Glenn introduced the language on approvals of retransfers for reprocessing or return of plutonium, including the ''timely warning'' test, that subsequently was adopted as the statute language. This language was a substitute for a previous formulation identical to that contained in the House bill, H.R. 8638, which passed with a dissenting vote on September 28, 1977, the same day the Senate Foreign Relations Committee reported out the NNPA. As indicated earlier, Senator Glenn offered this new language following discussions with and in response to objections by the Executive Branch that the previous formulation on approvals of retransfers was too ''restrictive in scope'' (14).

It is important to note the motivation as well as substance of the Administration's position at this point. The Administration was facing a serious problem in that the House and Senate bills had virtually identical provisions that subjected decisions on retransfers for reprocessing or return of plutonium to consideration of a single factor, the timely warning criterion. The Administration was concerned that this single test could be used to block U.S. approvals of any such retransfers and disrupt trade relations with our allies. Accordingly, the Administration had to either try to get the Congress to alter the definition of ''timely warning'' or broaden the test for approvals of retransfers to include other factors besides timely warning. Thus, in its comments on the marked up version of the NNPA reported by the Government Affairs Committee, the Administration said this about the proposed test for retransfer (15):

''First, it would jeopardize negotiation of new, strict nuclear cooperation agreements since an overly strict interpretation of the ''timely warning'' standard could rule out all forms of fuel processing necessary for future fuel cycle activities. Second, timely warning should not be the sole basis for making determinations concerning the acceptability of subsequent arrangements, taking into account the existence of other factors which must be evaluated. Additional factors of importance include the nonproliferation policies of the countries concerned, and the size and scope of the activities involved.''

Now, it is interesting that the language actually proposed by the Administration by way of compromise, language that was arrived at following negotiations with Senator Glenn, clearly takes the path of broadening the test for approvals for retransfers, and does not change the definition of ''timely warning'' but merely attempts to make the determination fuzzy by referring only to the probability of timely warning being available. The proposed language was as follows (16).

''The Administrator may not enter into any subsequent arrangement for the reprocessing of any such material in a facility

which has not processed power fuel assemblies or been the subject of a subsequent arrangement therefore prior to the date of enactment of the Act or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing unless in his view such reprocessing to retransfer shall take place under conditions that will safely secure the materials and that are designed to ensure reliable and timely detection of diversion. In making his judgment, the Administrator will take into account such factors as the size and scope of the activities involved, the non-proliferation policies of the countries concerned and the probabilities that the arrangements will provide timely warning to the United States of diversions well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and''.

Senator Glenn's explanation of the amendment he offered at the Foreign Relations Subcommittee markup left no doubt that it was not his intention to change the meaning of timely warning, but rather to broaden the test for approvals of certain retransfers. To see this, we note that in his statement, Senator Glenn referred approvingly to recent congressional testimony by then NRC Commissioner, Victor Gilinsky, defending the timely warning standard against Administration criticism that it was ''unnecessary, unworkable, rigid, and unrealistic'' (17). Senator Glenn went on to say, (18).

''The idea of timely warning is the explicitly stated objective of the so-called blue book safeguards of the IAEA, which polices the Non-Proliferation Treaty. Under this system, as under the U.S. bilateral safeguards which preceded it, records are kept of all nuclear material going into and coming out of civilian power reactors throughout most of the world, and verified by an international inspectorate. The idea is simply that the disappearance of any of this material will be reported to the international community in plenty of time to allow for appropriate counteraction. Thus timely warning is essential to effective safeguards.''

Senator Glenn's references to safeguards and timely warning strongly imply that the timely warning criterion in his amendment could be met only if the reaction time afforded by the safeguards system's detection of a diversion was sufficient ''to allow for appropriate counter action'' (19).

This thought was echoed in substance by Representative Bingham (D–NY) in introducing this language on the House floor 14 days later. He said (20):

''(W)e consider (timely warning) to be an essential to the safeguarding of nuclear facilities. If there is no timely warning, there are no effective safeguards.''

At this point in the Senate markup and without challenging Glenn's view, the Chief Administrative spokesman, Ambassador Gerard C. Smith, expressed two Administration concerns explicitly. First, he said (21):

''May I observe on that Gilinsky quotation that we don't disagree with the concept of timely warning. It is a very appropriate consideration here but we feel it will lead to distortions if it is made the *exclusive* (emphasis added) consideration.''

This statement shows that the Administration understood that ''timely warning'' was a concept that could stand separately and apart from other considerations in determining how to exercise U.S. consent rights for certain retransfers. Indeed, prior to Senator Glenn's statement, Senator Pell had stated that (22):

''The Executive Branch believes that the timely warning standard should not be the sole basis (emphasis added) for measuring an arrangement's acceptability. . . .''

There is no hint in this markup record that the Committee viewed the position of the Administration as seeking to alter the meaning of ''timely warning'' or how to determine it. On the contrary, the position statement by Senator Pell indicates that the Committee saw the Administration's goal as replacing the timely warning test with a broader one in which the test of ''timely warning'' was an important factor.

The second concern expressed by the Administration at the markup stemmed from its own confusion between ''timely warning'' and ''reaction time''. The House report had stated in essence that the amount of reaction time needed to effectively counter a diversion from a reprocessing plant based on the Purex process was unlikely to be larger than the conversion time to make the bomb (23). The drafters of that report also tried to provide some guidance for a minimum acceptable amount of reaction time, corresponding to a situation where the diverting country only possessed stored spent fuel and had no reprocessing facility. The effect of this would have been to force the denial of nearly all reprocessing requests since ''reaction time'' would have been mandated to a level greater than ''conversion time'' in almost all cases, thereby leading to a failure of the ''timely warning'' test.

In sum, the administration's second complaint was directed to the fixing a priori of a high ''reaction time'' guideline that effectively did not allow approval of any reprocessing requests. This lack of flexibility in judging reprocessing requests was viewed by Senator Glenn as having been taken care of in his amendment, which did not mandate a ''reaction time'' beyond that needed for ''effective safeguards'', and which allowed other factors (besides ''timely warning'') to be taken into account in judging whether to approve a request. Indeed, although Ambassador Smith's initial reaction to the Glenn language was that ''. . . it doesn't move enough in the direction of flexibility that I think is necessary . . .'' (24), the Administration's own proposed language at that point, as we have already seen, gave no hint of altering the meaning of ''timely warning'' or the factors that would have involved its determination. Therefore, when the subcommittee adopted Glenn's language, it had no alternative meaning of ''timely warning'' before it.

This conclusion was reinforced at the opening of the discussion of the Glenn amendment during the full Committee markup on September 20, 1977. In response to the Chairman's (Senator Frank Church, (D-Idaho)) request for an explanation of the amendment, Senator Glenn replied (25):

''The main issue on the timely warning amendment is this. Timely warning really means technical safeguards and making a judgment as to whether approving reprocessing for some country will result in a significant elevation of risk. The question arises as the weight that should be given to technical safeguards as opposed to, say, political or foreign policy considerations.

My position, as relected in the language adopted by the subcommittee was that technical safeguards, that is, timely warning, should be given primary consideration in these cases. We should not be able to override that because it seems to me that the technical methods of giving timely warning are so critical to the system of safeguards and protections that we have in this area that they should not be ignored.''

Now this quote is from an uncorrected record. In the first paragraph, when Glenn says, '''Timely warning' really means technical safeguards'', it should be understood (indeed, cannot be understood any other way) from the context of all that has gone before, that the statement implies '''timely warning' really means effective technical safeguards,'' where, in the Subcommittee markup, Glenn made it clear that effective technical safeguards meant detection of a diversion by technical means ''in time for use to do something about it'' (26).

The second paragraph, in the absence of further elucidation, could have been interpreted as meaning that the absence of ''timely warning'' can never be overridden by political or foreign policy considerations. A later statement by Glenn (27) indicates that he meant for ''timely warning'' to be the largest single factor (''it would be given the bulk of the consideration'') in judging whether a retransfer would result in a significant increase in the risk of proliferation. This view was not challenged by the Committee during its discussion of ''timely warning''. Rather, the committee concentrated on those other factors which, in strong combination, could produce a decision in favor of a retransfer even if ''timely warning'' is not clearly determinable. Senator Glenn turned the general discussion to specifics by suggesting that (28):

''. . . in the report language we put in that there are situations in which other factors, besides timely warning, may induce the Secretary of State to give his approval. I will give a few examples.''

Senator Glenn then listed the factors that ended up being mentioned in the Senate report and in his floor statement during debate on the bill. Senator Church summarized the discussion by saying (29).

''Clearly what is sought is to give timely warning a very high priority; but at the same time to recognize that there may be circumstances . . . that will suffice and lead us to grant such a request even though timely warning is not present.''

Note that there is no suggestion of any change in the definition or interpretation of timely warning as given earlier by Senator Glenn.

Moreover, Senator Glenn indicated that discussions had been held on his proposed language with members of the House Committee on International Relations (indeed, there was much staff contact on this issue at the time) and that ''they are in agreement with this language (30).'' What is implied here is that the House members agreed not only with Glenn's language, but also with his interpretation of that language.

At this point, Senator Richard Stone (D-Florida) asked for the Administration's views on this matter. Mr. Philip Farley, the chief Administration spokesman at the full Committee Markup, stated that the Administration's position was set forth in letters to the Senate Foreign Relations Committee dated September 12 and September 19, 1977, and asked that these letters be placed in the record (31). The letter of September 19th, from Assistant Secretary of State Douglas Bennett to Senator John Sparkman (D-Alabama), contained the substantive details of the Administration's position. The most important paragraph is reproduced below (32):

''Agreement has been reached on suitable language relating to the timely warning standard to govern U.S. approval of reprocessing with the leadership of the House Committee on International Relations. This language is acceptable to the Administration. While setting forth strict standards, it recognizes that other foreign policy and non-proliferation factors must be considered. It should also be recognized that warning time associated with alternative reprocessing technology is difficult to quantify but does represent a continuum, progressing from a minimum time associated with processes

that involve separated plutonium to longer times for processes that involve uranium and most of the fission products present in irradiated spent fuel. Timely warning is a function of a number of factors, including the inherent risk of proliferation in the country concerned, the amount of warning time provided, and the degree of improvement in warning time that alternative reprocessing technology provides relative to other technologies.''

We note that the phrase ''inherent risk of proliferation'', which appears almost gratuitously and with no explanation of its meaning, was never used in any previous Executive Branch communication to the Congress on ''timely warning''. We also reiterate our comment in note (4) that this phrase or concept was given no substantive acknowledgment in the legislative history of the NNPA beyond its appearance in the September 19th letter.

In discussing the content of this letter, Mr. Farley went into a long and cogent explanation concerning the amount of warning time available to the U.S. under various circumstances involving the retransfer of nuclear materials. But his explanation does not reflect, in words or implication, any notion that timely warning is a function of ''the inherent risk of proliferation'' in a country, whatever the meaning of that phrase. Indeed, Mr. Farley's explanation of warning time conforms with the notion that one must consider the worse case possibility of a completely unexpected diversion in determining whether one's warning time is ''timely'' or not. He said (33):

''For many States, clearly achieving the capability to proceed fairly quickly to a nuclear explosives capability is increasingly going to be something which they have. *In that case, there will be very strict limits on the amount of warning we can expect*'' (emphasis added).

Mr. Farley did not say that the ''strict limits'' he referred to depended on a fuzzy concept like the ''inherent risk of proliferation'' in a country. He tied those limits only to technological capability. There was no further substantive discussion on this point in the markup because the Executive Branch's explanation of the timely warning language was not viewed as differing from the explanation offered earlier by Senator Glenn.

Thus, the State Department letter of September 19th played no role in changing the congressional view of ''timely warning'' that had existed from the beginning. The Glenn compromise allowed for ''timely warning'' not to be the controlling factor in every circumstance where one had to judge whether a given subsequent arrangement would result in a significant increase of risk of proliferation, but the meaning of ''timely warning'' was unaffected.

The above claim is nailed down for good by considering the House floor statements on timely warning, following the Senate markup.

IV. The House Discussion of the New Language on Timely Warning

The House floor debates clearly show that House members viewed the new language as not altering the relationship of timely warning to effective safeguards, i.e., that timely warning was still to be viewed as having to do with ''that interval of time that exists between the detection of a diversion and the subsequent transformation into an explosive device'' (see (8)).

In support of this proposition we have already offered a statement by Representative Bingham in introducing the Glenn language on September 28, 1977. Statements by other key participants also are supportive of our claim. For example, Representative Paul Findley (R–Ohio), Ranking Member of the House Committee on International Relations, in two speeches given before and after the final markup of the NNPA in the Senate, showed that his view of the meaning of ''timely warning'' was unaffected by the Senate action. He stated (34):

''Moreover, the definition of an effective safeguard standard—timely warning—will insure that recipient nations cannot manufacture, undetected and overnight, bombs from materials we provide for peaceful purposes.''

Representative Findley solidified his view of timely warning in the floor debate on September 28, 1977, with the following discussion of the related concept of ''warning time'' (35) (recall that timely warning is present when warning time exceeds reaction time):

''One needs to have warning times that are ample enough to give supplier states or the international community an opportunity to orchestrate an effective response *to an act of diversion* and to be able to do this, moreover, before the violator is able to transform his stolen material into bombs.'' (Emphasis added.)

Representative Lagomarsino (R-California) in support of the compromise amendment described it as follows (36):

''Specifically, it requires that the reprocessing of U.S.-supplied fuel must occur under conditions that provide timely warning of illicit diversion of bomb-usable material. Without such timely warning, the nuclear safeguards system becomes meaningless. We would discover that the plutonium has been diverted after the bombs have been built. Delayed warning or no warning at all would render deterrence impossible.''

Representative Lagomarsino went on to paraphrase the amendment, and describe it further. He said (37):

''. . . the timely warning amendment . . . will further require the Administrator to give foremost consideration to the question of whether the reprocessing facility and the reprocessed product *can be safeguarded so* as to provide timely warning (emphasis added) to the United States of any diversion well before the time at which a *violating* (emphasis added) country could transform weapons-useable material into a nuclear explosive device. Such warning time is essential if the international community or the community of supplier states is to have the opportunity for action. And it is only when such an opportunity for action exists, that safeguards can reliably be considered to deter''.

Finally, Representative Legget (D-California), while expressing general support for the House bill on the day it passed (September 28, 1977), expressed a number of reservations about the changes in the measure, including ''timely warning'' (38). His complaints, however, do not address any perceived change in definition, but address the fact that certain facilities were exempted from immediate application of the timely warning standard. The tenor of his remarks suggest that if he had perceived a change in the definition of timely warning to make it ''more flexible'', he would have cited this as a problem.

The congressional statements discussed above make clear that the change in wording of the amendment did not alter the intent of Congress to view ''timely warning'' as a measure of whether effective action was possible *after discovery of a diversion* (i.e., the worst-case scenario) to deter or prevent the diverting country from fashioning a nuclear explosive device. There is no reference in the House debate to any concept such as the ''inherent risk of proliferation'' as being part of the ''timely warning'' test. Indeed, there is no indication that any member of the House saw a copy of the Bennett-to-Sparkman letter that contained this phrase, let alone paid any attention to it. The only Administration communications that appear in the record of the House debate are identical letters (39) dated September 17, 1977 from Secretary of State Cyrus Vance to Representatives Zablocki and Findley approving proposed amendments to be offered by Congressman Bingham and expressing support for the amended bill. There is not only no reference to ''inherent risk of proliferation'' as an ingredient of ''timely warning'' in these letters, but one of the letter's recipients, Congressman Findley, *in the statement that preceded his placement of the letter in the Congressional Record* reiterated his view that ''timely warning'' was connected to the notion of effective international safeguards. In his words (40):

''Moreover, the definition of an effective safeguard standard—timely warning—will insure that recipient nations cannot manufacture, undetected and overnight, bombs from materials we provide for peaceful purposes.

''By requiring safeguards to provide reliable, timely warning of diversion we are not committing to a new standard but are returning to an old truth.''

Later, in the same statement, Representative Findly said:

''Existing safeguards when applied to reactors do provide reliable, timely warning'', but that ''present safeguards, when applied to reprocessing, do not . . . permit timely warning.''

He went on to say that:

''[W]e must devise safeguards that, when applied to reprocessing, will provide reliable, timely warning. Promising technologies exist which, if pursued, may satisfy this standard. This bill, by defining the standard that safeguards must meet intends to stimulate these new technologies.''

Congressman Findley then referred to collaboration between the Committee and the Administration ''to fashion this safeguard standard'', and remarked that ''. . . the president and Secretary of State have urged that this legislation pass Congress during this session—in its present form—without amendment'' (41).

Obviously, it was not Congressman Findley's understanding that the Administration was proposing any substantial alteration of interpretation of ''timely warning'' from the one he had just laid down.

The conclusion is therefore inescapable that the House did not see the Senate action as changing the meaning of timely warning, but only as broadening the test for determining whether a subsequent arrangement for reprocessing or return of plutonium would result in a significant increase of the risk of proliferation.

V. Conclusion on the Meaning of Timely Warning

There is no logical alternative to the conclusion that the Congress meant for the ''timely warning'' criterion to apply to the most difficult or ''worst-case'' situation, where the U.S. would not suspect in advance that a diversion might occur, but would learn about it after the fact, when the safeguards system had detected it. That is, when detection time is a *positive* quantity. In this case it follows from the definition that *''timely warning'' is met only when reaction time is less than conversion time* (which depends only on a technical and not a political assessment). This explains why the legislative history of the NNPA is replete with references to ''timely warning'' as being associated with what we are here calling ''conversion time'', and squares the statutory (Senate) language on ''timely warning'' with the discussion of the concept in the House report.

VI. The Relationship of Timely Warning to Other Factors in Determining Proliferation Risk

The Senate report, after a discussion of factors that are involved in judging whether ''timely warning'' would be present (i.e., factors entering into an assessment of ''conversion time'' and ''detection time''), launches into a listing of ''other factors which may be taken into account in determining whether there will be a significant increase in the risk of proliferation.'' These are (42):

(1) ''whether the nation is firmly committed to effective non-proliferation policies and is genuinely willing to accept conditions which would minimize the risk of proliferation'';

(2) ''whether the nation has a security agreement or other important foreign policy relationship with the U.S.'';

(3) ''the nature and stability of the recipient's government, its military, and security position''; and,

(4) ''the energy resources available to that nation''.

There would have been no reason for the Senate to label these as ''other factors'' if they already were included in judging whether the ''timely warning'' test was met. To do otherwise would have meant that the Senate was counting such factors twice in giving guidance to DOE on retransfer requests, in which case these component factors would become the ''foremost'' factors in practice, a result not in keeping with the clear congressional intent to identify ''timely warning'' as a separate, ''foremost'' factor.

We have thus established through examination of the NNPA, the Senate and House Reports on the legislation, the Senate Markups, and the floor debate, that Congress intended ''timely warning to be an important factor (the ''foremost'' one), separable and apart from specific political considerations in determining whether a proposed subsequent arrangement for reprocessing or retransfer of plutonium will result in a ''significant increase of the risk of proliferation.''

VII. The Need for Adequate Analysis of the Timely Warning Criterion by the Executive Branch

The chief sponsor and Senate floor management of the bill, Senator John Glenn, stated during the floor debate on February 7, 1978, that (42):

''It is important to note, however, that the bill requires that foremost consideration be given to the question of timely warning. This implies that the latter will receive the greatest weight among all factors. Although this does not require denial of a request when timely warning is not clearly determinable, the language suggests that in the absence of a clear determination that timely warning will indeed be provided, a strong combination of other factors would be necessary to compensate for this weakness in safeguards.''

This statement emphasizes the importance of clearly determining that the ''timely warning'' test has been met. Since Executive Branch decisions on retransfers were made optionally reviewable by the Congress under the NNPA, it would have made no sense for the Congress, which went through tortuous hours of debate and negotiation with the Executive Branch on this issue, to intend the Executive Branch to make an important, possibly critical, determination on ''timely warning'' without adequate supporting analysis showing that the test, as laid out by the Congress, had been met. Therefore, an Executive Branch determination, such as in the Japanese plutonium case, in which there is inadequate analysis revealing how the presence of ''timely warning'' was arrived at, which does not show how ''foremost consideration'' was given to it, and which suggests that extraneous political factors were the main component in the determination, is directly counter to Congressional intent.

FOOTNOTES

(1) P.L. 95–242, enacted on March 10, 1978.

(2) Letter from NRC Chairman Nunzio J. Palladino to DOE Secretary Donald P. Hodel, September 13, 1984.

(3) Private communication.

(4) A phrase used without definition or explanation by the Administration in discussing its own position on ''timely warning'' in a letter dated September 19, 1977, from then Assistant Secretary of State Douglas Bennett to the Chairman of the Senate Foreign Relations Committee, Senator John Sparkman (D-Alabama). It should be noted that this phrase was never mentioned or acknowledged in any way in the extensive House and Senate debates on the floor, during markups, or in hearings.

(5) Senate Report 95–467, October 3, 1977.

(6) Congressional Record—House, February 23, 1978, p. 1456.

(7) Congressional Record—House, February 9, 1978, p. H918.

(8) House Report 95–587, August 5, 1977, p. 18.

(9) See (5), p. 11.

(10) Ibid.

(11) Stenographic Record of Markup—S. 897, U.S. Senate Subcommittee on Arms Control, Oceans, and International Environment, Committee on Foreign Relations; Alderson Reporting Company, September 14, 1977.

(12) Stenographic Record, Committee Business, U.S. Senate Committee on Foreign Relations; Alderson Reporting Company, September 20, 1977.

(13) Stenographic Record, Committee Business, U.S. Senate Committee on Foreign Relations; Alderson Reporting Company, September 28, 1977.

(14) See (5), Section on Executive Branch Comments on S. 897 (As reported by Senate Committee on Governmental Affairs), September 12, 1977, with cover letter from Secretary of State Cyrus Vance, p. 42.

(15) See (14), p. 47.

(16) Ibid.

(17) See (11), p. 14.

(18) Ibid.

(19) Ibid.

(20) Congressional Record—House, September 28, 1977, p. H10280.

(21) See (11), p. 15.

(22) Ibid., p. 11.

(23) See (8), p. 20.

(24) See (11), p. 15.

(25) See (12), p. 45.

(26) See (11), p. 14.

(27) See (12), p. 61.

(28) Ibid., p. 60.

(29) Ibid., p. 61.

(30) Ibid., p. 57.

(31) Ibid., p. 62, The letter of September 12th from Secretary Vance to Senator John Sparkman, Chairman of the Senate Foreign Relations Committee, is identical to the cover letter referred to in (14).

(32) See (5), p. 59.

(33) Ibid., p. 65.

(34) Congressional Record—House, September 22, 1977, p. H9833.

(35) See (20), p. H10282.

(36) Congressional Record—House, September 28, 1977, p. H9835. Although this statement was made on September 22, it was made in reference to the new language on ''timely warning'' that was formally considered by the House on September 28, 1977. (See colloquy between Representatives Lagomarsino and Bingham in Congressional Record—House, September 28, 1977, p. H10280).

(37) Ibid.

(38) See (20), p. H10282.

(39) See (35), pp. H9832 and H9834.

(40) See (35), p. H9833.

(41) See (35), p. H9834.

(42) See (5), p. 12.

(43) Congressional Record—Senate, February 7, 1978, p. S1310.

(44) Section 131a (1) of the Atomic Energy Act as amended provides for a 15 day period of notice before a proposed subsequent arrangement goes into effect.

Mr. GLENN. Madam President, we started working on this effort of nonproliferation back many years ago in my very early days in the Senate. We have been on it ever since. Sometimes you feel like the little story of the Dutch Boy with his finger in the dike. You feel like you are not getting very far, and then you find some nations which are willing to sign up under the Nuclear Nonproliferation Treaty [NPT] and place their confidence in some of the restrictions we have had going on around the world. They express admiration that we and Russia finally are at long last getting our nuclear stockpiles downhill somewhat. So maybe over the long term we are making considerable progress in that area.

IRS COMPLIANCE INITIATIVE

Mr. GLENN. Madam President, I rise today to take issue with my distinguished colleague, the majority leader, whose amendment would severely impact the wide variety of Federal programs on which all Americans rely.

The amendment being offered by the majority leader seeks a recession in the funding of the Internal Revenue Service of $100 million. The funding in question is part of the IRS' new compliance initiative, a broad-based effort to collect all the outstanding tax revenue rightfully due the Federal Government. This excellent program, which was passed with bipartisan support by the Congress last year, will bring in more than $9.2 billion in additional revenue over the next 5 years at a cost of just $2.2 billion during the same period. This is a great deal by anybody's calculations.

In fact, as we stand here and debate, this initiative is already working. For the first quarter of 1995, the IRS has generated an additional $101 million of enforcement revenue, 31 percent of the fiscal year 1995 commitment. These are outstanding results for which we should commend the IRS, given that the program has only just begun and that some lag is always necessary to hire new compliance staff. Do we really want to stop a program that brings in revenue to the Government?

Madam President, I am as aware as any of my colleagues of the need to save scarce tax dollars and effectively spend resources provided by the public. I have long believed that there is a lot of fat, fraud, waste and abuse in Government programs. It has been the focus of our activity on the Governmental Affairs Committee for the last several years.

But I must respectfully take issue with cuts that would come in a program expected to bring in $9.2 billion. If the Senate approved this amendment to the recession bill, then the IRS would be seriously affected by the resulting funding cut. IRS estimates that at this point in the fiscal year, the agency would have to furlough all 70,000 compliance personnel for up to 10 days. At the same time, a cut of this magnitude would cost the Government approximately $500 million in lost collections in addition to the loss of revenue from this initiative.

I am aware that some of my colleagues think that because this appropriation last year was made outside of the domestic discretionary caps, that it undermines our budget strictures and unfairly provides one agency with additional resources. While I sympathize with this reasoning in general—and would not be eager to make exceptions for other agencies—I think that in the case of the IRS, the only responsible choice is to make an exception. To cut compliance funds from the IRS, when each new revenue officer brings in five times their keep, is truly penny wise and pound stupid.

Cutting compliance funds for the IRS is not good logic and it is not good business. I cannot support this amendment that the majority leader has offered. I hope it goes down to defeat.

Madam President, the IRS has had problems. We followed those problems through a number of GAO reports. They have had some financial management problems. After we passed the CFO Act, the IRS management was one of the areas that was targeted to have a first look made of it under the CFO Act to see how they are doing. They are making a number of improvements now as a result of those studies.

Another area that I have followed for several years in which we are beginning, I think, to maybe get our hands on is in the area of IRS receivables. I do not think most Members of this body, or most Americans, people out across America, realize the IRS has owed to it somewhere around $156 billion. Why do we not go out and collect that? Part of that is not collectible in that it is debt that is not validly collectible; where people have gone into bankruptcy, either individually or as corporations. So a big chunk of it fits in that category.

How much can we go out and collect? Peeling that $156 billion down, they have active accounts, they estimate, of $79.5 billion. But they expect, when they look into those, that some are going to be abated or suspended because it will cost more to get them than the money they would get back anyway. But when you come down to the hard core figures that we were given just day before yesterday in a hearing by the Commissioner of the IRS, Margaret Richardson, they feel over there right now that actually collectible money, if we had the people to go out and collect it, is $27.5 billion out there. That is collectible money on IRS accounts if we had the people to go out and get it.

We provided them with additional people last year. We have several thousand people, 4,000 I believe it was, a little over 4,000, that we got as new, full-time employees to go out and collect those accounts because each employee actually brings back in about five times his or her keep as an agent in the IRS.

Now, I think that is a good investment. I think when we talk about cutting back in some of these areas and cutting back on their enforcement money, I cannot understand that, when they bring back far more than what it costs us for those particular people.

The impact of the $100 million rescission would have some far-reaching effects also. We had a hearing just this morning on earned income tax credit. Now, that is a program that has had a lot of fraud and problems because people file either some false income data or they file the wrong number of dependents or whatever and a fairly high percentage of those returns are fraudulent returns.

Now, what do we do? Just as the IRS at the beginning of this year said they were going to do, hold up and look at those returns before they automatically send the money out. They are doing that right now. And we are about to cut the people who do that. We are going to lose far more than the $100 million rescission that has been proposed.

What the amendment would do, it would actually cut the IRS tax law enforcement appropriation by $100 million, 25 percent of the amounts approved in fiscal 1995 for a compliance initiative which is intended to collect an additional $9.2 billion over the fiscal 1995 to fiscal 1999 time period.

The amendment would further require that any revenue officers hired since the beginning of fiscal 1995, which are those addressing the accounts I just mentioned, would have to be redeployed as collection call site assisters.

And third, the amendment would limit the cuts that could be made to the examination and inspection activities of IRS to accommodate the rescission. Reductions cannot take these activities below fiscal 1994 approved levels.

The IRS compliance initiative is designed—and is carrying on right now—to try to already reduce the deficit. Last year, Congress approved a $405 million annual investment to collect an additional $9.2 billion to reduce the deficit over a 5-year period. And the initiative is working. That is the good news. Early results show that IRS will meet or exceed the goal of generating the additional $9.2 billion. In fact, through the first quarter alone, the initiative has generated an additional $101 million of enforcement revenue—in the first quarter of this year. That is 31 percent of the fiscal 1995 commitment. It is ahead of schedule. In other words, they have collected more this year already than it would cost to keep the program in place.

These initiative results are being tracked. They have a new system for tracking enforcement initiatives, and revenue has been developed and approved by GAO. The first-quarter report was delivered to Congress on schedule on March 31.

Further, cutting the initiative increases the deficit. For every appropriated dollar saved, tax revenues are reduced by nearly $5. The cost of this cut in lost revenue is $500 million, if it is limited just to 1 year—a 5 to 1 ratio. If the cut is permanent, the revenue loss is in the range of $2.5 billion. The rescission will negatively impact examination coverage, collection of delinquent accounts, information returns matching, and efforts to curb fraud and abuse with refundable credits.

Just think of that. If we make this cut of $100 million, we are going to reduce impact; we are going to reduce examination coverage; we are going to reduce collection of delinquent accounts, and we are going to not reduce one of the big problems, matching information returns in order to curb fraud and abuse on those refundable credits that we send out.

These are only direct revenues. The Service's enforcement activities also encourage voluntary compliance. When other people see what is going on and they are not able to get away with fraud and abuse, they think twice before they do it and they check that return an extra time before they send it in to make sure there are not mistakes in that account. An estimate has been made of this. Every 1-percent increase in voluntary compliance increases tax revenues by about $10 billion annually. I think that is a very, very impressive figure.

There are some other aspects of what this $100 million rescission cut would do to IRS. Stop-and-go financing disrupts IRS operations. IRS put in place a long-range hiring and training plan. They did it with our support, with our encouragement. Over 4,000 people have been hired or redeployed to compliance jobs so far as part of this initiative. It is a good initiative. In balanced tax administration, ACS addresses predominantly the high volume of low- to middle-dollar cases while revenue officers address the more complex higher dollar individual and business cases. Uneven enforcement could lead to a perception of unfair tax administration. So we want a balanced tax administration.

There are limits to telephone intervention. Certain issues, such as trust fund recovery penalty, cannot be resolved with the telephone. Additionally, certain enforcement tools require face-to-face contact, including seizure and sale, lien priority investigations, and offers in compromise.

The IRS fiscal 1995 savings options are few. With only 6 months remaining in the fiscal year, IRS would need to

make reductions through a combination of an across-the-board hiring freeze in the tax law enforcement appropriation and the staff furloughed.

Now, the worst case I mentioned a moment ago is a furlough of all 70,000 tax law-enforcement appropriation personnel for a 10-day period. A 10-day furlough could result in $500 million in lost revenue collections. So that sounds like a poor bargain to have to do that.

Another factor, too, is using revenue officers as call-site assisters is not practical. In allocating resources for the fiscal 1995 initiative, IRS listened to GAO and congressional concerns regarding staffing for automated collection call sites. The fiscal 1995 initiative contained 2,200, FTE's, full-time employees, for collection; 1,450 of these FTE's were allocated to positions other than revenue officers such as ACS, service center examiners, bankruptcy, account notice work in toll-free operations, and early intervention. Counting the early intervention initiative, 900 additional full-time employees were allocated to ACS.

I wish to also mention the capacity issues. IRS has 3,276 full-time employees assigned to ACS. There are space, equipment, and system limitations that would need to be addressed to accommodate the redeployed revenue officers if this legislation went through. The usual procurement cycle for space and equipment is 18 months.

Since the start of fiscal 1995, only 216 revenue officers have been hired, 89 from outside the IRS and another 127 from other occupations within the IRS.

And redeployment is costly. Even if there were available ACS positions to be filled, redeploying recently hired revenue officers would be costly and it would be inefficient. Revenue officers were not hired in the same location as ACS sites. Revenue officers from around the country would have to either travel to distant cities, incurring travel and hotel costs, or be permanently moved. It has its own costs associated with it. This would mean as much as $7 million in unnecessary travel costs. Further, IRS would be using higher skilled revenue officers to do call-site work that could be done at lower salary costs.

Madam President, this is simply not good business, to cut $800 million out in the interest of balancing the budget, much as we may want to do that, and at the same time cut back on the modernization systems that the IRS has undertaken.

These are good programs that they have and cutting $100 million from law enforcement is exactly the wrong way to move.

I will quote from another document that came to my attention in the office. The headline is:

Cutting $100 Million From Law Enforcement Bad Move, Richardson Says.

Congress should reconsider before it rescinds $100 million of a $405 million compliance initiative enacted last year, IRS Commissioner Margaret Richardson testified April 3.

Richardson told the Senate Appropriations Subcommittee on Treasury, Postal Service and General Government that the rescission proposal ''is simply not good business.''

The proposal is part of S. 617, which would cancel $13 billion in fiscal 1995 spending. It was offered as an amendment by Sens. Robert Dole, R-Kan., and Thomas A. Daschle, D-S.D.

Richardson, defending the agency's $8.2 billion request for fiscal 1996, said any reduction in law enforcement funds or personnel could reduce revenue $2.5 billion. ''Unlike many agencies, the IRS is not a program agency. Over 70 percent of the IRS's budget is personnel cost,'' she said.

And she went on to detail some more of this.

I ask unanimous consent that that article, and another article out of the Washington Times, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Highlights & Documents]

CUTTING $100 MILLION FROM LAW ENFORCEMENT BAD MOVE, RICHARDSON SAYS

(By Ryan J. Donmoyer)

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Except for her comments on the rescission proposal, Richardson's testimony was basically the same she has given to several congressional panels since the Clinton's budget was released in February.

Yet even as Richardson tried to justify a $739 million budget increase for fiscal 1996, she found herself talking an awful lot about this filing season.

Sen. J. Robert Kerrey, D–Neb., criticized Richardson and her entourage of deputy commissioners for delays this year in the issuance of the earned income credit. Accusing the IRS of harassing ''hard-working Americans,'' Kerrey said measures such as getting a notary and a clergy member to attest to a child for suspect returns amounted to abuse of taxpayers.

Richardson, taken aback by Kerrey's criticism, said the Service had uncovered several schemes, many involving multiple returns. Fraudulent EITC refunds cost Treasury $1 billion to $5 billion last year, according to official estimates.

Kerrey criticized Richardson for characterizing ''some'' of those caught as ''common street criminals'' and wondered aloud how much of the fraud is committed by organized efforts and how much by individuals trying to snag an extra hundred dollars. Richardson could not say.

''There are bigger fish in the ocean,'' said Kerrey, who suggested the IRS should pay more attention to corporate fraud and individuals who try to avoid all tax.

Richardson tried to escape the examination by saying she would testify on the EITC before the Senate Governmental Affairs Committee the next day.

Subcommittee Chairman Richard C. Shelby, R–Ala., quizzed her about problems with electronic filing and whether the Service could cut its staff positions by 30,000 in seven years if it got all of its budget request.

Shelby also asked Richardson about a March 29 Tax Analysts article that said IRS computers were responsible for some of the millions of returns rejected this year. Richardson said the IRS has found that all of the rejects were caused by taxpayer errors.

[From the Washington Times, Apr. 4, 1995]

IRS FIGHTS RECISION, TELLS HILL PANEL IT WOULD BOOST DEFICIT

(By Ruth Larson)

A Senate proposal to trim the current budget of the Internal Revenue Service ultimately will increase, not decrease, the federal deficit, IRS Commissioner Margaret Milner Richardson told a Senate panel yesterday.

The cuts are part of a $1.2 billion recision package now being considered on the Senate floor. Senate Republicans want to pay for federal disaster relief by trimming funds already appropriated for federal agencies like the IRS.

IRS' share of the cuts—$100 million—would come from the $405 million appropriated by Congress last year to help the agency increase tax compliance by hiring 4,000 more agents. The plan was touted as a relatively painless way to raise $9.2 billion in revenues in the next five years, to be earmarked for deficit reduction.

That compliance initiative may be jeopardized just as it gets under way if some Senate Republicans have their way. An amendment expected to be introduced today by Senate Majority Leader Bob Dole of Kansas and Sen. John Ashcroft of Missouri would rescind a quarter of the IRS compliance funding.

Mrs. Richardson said that while she understands Congress is being forced to make difficult funding choices, ''some cuts that might appear to produce a short-term benefit may not actually do so. The recision proposal is simply not good business.''

The IRS estimates that for each dollar spent on compliance, such as hiring more enforcement officials, it receives $5 in extra tax revenues. Thus, cutting $100 million could translate to a $500 million loss in revenues next year, and a five-year loss of $2.5 billion, Mrs. Richardson said.

Budget cuts could force the IRS to furlough all 70,000 of its compliance agents for up to 10 days, or even lay off the 4,000 newly hired agents, Mrs. Richardson told the Senate Appropriations subcommittee on the Treasury.

Sen. Richard C. Shelby, Alabama Republican and subcommittee chairman, has been skeptical of the IRS initiatives. Last year he supported an amendment, eventually rejected, that would have eliminated funding for the additional enforcement agents.

For its fiscal 1996 budget, the IRS has requested $8.2 billion—an increase of $700 million over this year's budget. ''Many of us are asking, What are we getting for this large expenditure?'' Mr. Shelby said.

More than half the increase is tied to the agency's on-going tax systems modernization.

Next year the IRS plans to upgrade its computer scanning equipment so it can enter all tax forms and supporting documents into its database. Basic tax data is now entered

manually, a time-consuming task prone to error; many supporting records are not even entered in the system.

The General Accounting Office has long criticized the IRS modernization efforts, saying it doubted the project would result in more revenue, even if it were completed. The GAO also has questioned the need for hiring more compliance staff. It found that the IRS has used the extra compliance funds to pay for budget shortfalls, such as locality pay.

Mrs. Richardson said, ''While the IRS agrees with many of the issues raised by GAO, we believe a number of their criticisms are not valid.'' An independent evaluation team from GAO has been looking at the program and is expected to report its findings to Congress next month.

Mr. GLENN. Madam President, when introducing this legislation, Senator DOLE, when he was listing the cuts, said ''IRS, 100 million—that ought to be a favorite of everybody.''

Well, I disagree with that. I disagree that cutting the IRS is going to prove to be popular with very many people.

On the following page of the Congressional RECORD, Senator KYL is quoted as saying, ''For example, as the majority leader says, it cuts $100 million from the IRS bureaucracy, and makes other changes,'' as though there was a bureaucracy over there that is not working properly to get in the amount of revenue that is owed to the Government.

Let me tell you why I think Senator DOLE is wrong in that regard. When I go back home, what makes people more unhappy than anything else—while they are unhappy at paying taxes, of course; no one likes to pay taxes—but what really burns people up is to feel that they are paying their taxes, they fill out that form, they are honest about everything they do, they do the most honest job they can in submitting their data in for the IRS to consider, but then, when they hear about other people getting away with falsifying accounts and with not submitting all the data and with getting away with something and not paying their fair share, that is what really concerns people very much. It makes them very, very angry. And it makes me angry, too, and, I am sure, every Member of this body.

Yet when we know there are compliance difficulties like this, and we know the earned income tax credit has some difficulties, and where we have programs that are set up now to address those difficulties and get every person to pay their fair share, and now we are saying that instead of expanding that program and making sure that that program is big enough to really make sure everybody does pay their fair share, we are going to cut it.

We are going to cut those funds by one-quarter? That just does not make any sense at all, just from a plain business, flat business standpoint, when we know that each IRS agent gets approximately five times his or her keep in return of revenues that they have found that should have been submitted or should have been paid for and was not. Now that just does not make any sense.

I appreciate the necessity to try to cut the budget here and so on, but this is absolutely the wrong, wrong place to do it.

Madam President, I would like to go to a different subject for a moment.

Another one of the cuts that has been proposed by the Republican Conference this year, which I think is very shortsighted and I hope it does not go through, is an attempt to cut the funding for the General Accounting Office by one-fourth in this 1 year.

Let me give just a little bit of background. We, in the Governmental Affairs Committee, have been the committee of jurisdiction and of supervision over the General Accounting Office ever since I have been on that committee and long before that. We work very closely with them.

They started over 2 years ago, before the last election, to downsize. They wanted to be more efficient. They started their own program of modernization and downsizing at GAO and it has been on schedule. What has happened? They are already down some 12 or 13 percent now and they plan by the end of 1997 to be down one-fourth smaller than they were when they started this program. They are doing that at their own initiative.

Now what happened? The Republican Conference came out with a policy that they want to see GAO cut one-fourth this year, an additional one-fourth of what the GAO is already doing, an additional one-fourth cut in this year alone. This would decimate the GAO.

We depend on the GAO as our investigative arm of Congress.

When they were before us a short time ago over in committee, I could detail just what my own personal efforts where, as committee chairman on the Governmental Affairs Committee, I had asked them to do certain reports. They would come back and then, as a result of that, with action here on the floor or working with other committees, we would point to several billion dollars just that I had saved, just with my own initiative working with GAO.

They have pointed out all sorts of problems. And yet we are trying to cut them back.

Where did this start? Where did people get down on the GAO to the point where they are proposing to be cut back by one-fourth when they do good work and where they their own downsizing already going. And, as Comptroller General Bowsher has said, if you just let them alone and let them proceed until the end of 1997, they will have reduced by one-fourth over that period of time and accomplished on their own an orderly reduction that still enables them to do their job without getting slashed as the proposal would do out of the Republican Conference this year.

There is an editorial in the Hill newspaper, Wednesday, April 5, today. That editorial is entitled ''Don't gut the GAO.'' By and large they state the situation pretty well, I think. I just read this a few moments ago, before I came on the floor. I quote from this editorial:

Ever since the General Accounting Office uncovered the House bank scandal, which cost many lawmakers their jobs and sent some to jail, Congress has been gunning for the watch-dog agency. Republicans were particularly incensed by GAO reports critical of President Bush's tax policies.

It now appears that the GAO, the research arm of Congress, may have to pay a heavy price for its independence. Senate Republicans want to slash the agency's budget by 25 percent.

The ostensible reason for this cut is a deeply flawed report by a panel of the prestigious National Academy of Public Administration, which concluded that the GAO had strayed from its role as a numbers cruncher and wandered into the more esoteric realm of evaluating government programs and policies. But how does an agency evaluate whether taxpayer funds are being well spent except by evaluating the programs and policies for which they are used?

Since its inception in 1921, the agency has saved taxpayers billions of dollars—more than $200 billion by some accounts.

In fact, I correct the editorial here. The $200 billion I think was since 1985, not going clear back to 1921.

I continue with the editorial:

It was the GAO that found the money trail in the Iran-Contra scandal. After uncovering the HUD scandal, the agency went to work on the Department of Defense, and found $36 billion in supplies not needed to satisfy current operations of war reserves. GAO also turned the spotlight on wasteful Medicare reimbursement practices, including hospitals whose physical therapists billed as much as $600 an hour even though their salaries were as low as $20 an hour.

Last year, the agency examined the Department of Energy's Rock Flats plant in Colorado, and found numerous safety problems, including ''plutonium liquids leaking from pipes and tanks, fire hazards and risks of exposing workers to plutonium.'' The GAO is currently studying Supplemental Security Income, which now costs $60 billion a year, a 140-percent increase in the last 10 years. The agency is seeking ways to bring the mushrooming costs under control.

Scotty Campbell, former head of the Office of Personnel Management who directed the critical study, nevertheless warns that a 25-percent budget cut ''could do serious damage to that organization in terms of getting on with its work and readjusting its mission.''

The agency, whose $443 million budget is the largest of any legislative branch agency, has already cut its staff from 5,325 to 4,700 since 1992, and is prepared to reduce it to 3,975 during the next two years. They would have to dismiss 1,600 employees in the next nine months to comply with a 25-percent cut in one year.

The GAO does have its internal problems. The agency is stymied by an antiquated management system that never ceases reviewing its work. It seems constitutionally incapable of producing reports to Congress on time—only 21 percent met GAO's own deadline.

Paradoxically, although Congress wants to slash the agency's budget, it bears most responsibility for GAO's workload. About 77 percent of the agency's work was at the request of Congress. Only last week, the Senate approved giving GAO responsibility for

reviewing every significant regulation promulgated by a Federal agency, a task currently performed by the Office of Management and Budget.

Clearly, the agency that uncovered the House bank scandal doesn't always give Congress what it wants. That makes the GAO all the more needed, especially when budget cutters are honing their axes.

This is definitely not the time to shackle Congress' most effective fiscal watchdog.

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Hill, April 5, 1995]

DON'T GUT THE GAO

Ever since the General Accounting Office uncovered the House bank scandal, which cost many lawmakers their jobs and sent some to jail, Congress has been gunning for the watchdog agency. Republicans were particularly incensed by GAO reports critical of President Bush's tax policies.

It now appears that the GAO, the research arm of Congress, may have to pay a heavy price for its independence. Senate Republicans want to slash the agency's budget by 25 percent.

The ostensible reason for this cut is a deeply flawed report by a panel of the prestigious National Academy of Public Administration, which concluded that the GAO had strayed from its role as a numbers cruncher and wandered into the more esoteric realm of evaluating government programs and policies. But how does an agency evaluate whether taxpayer funds are being well spent except by evaluating the programs and policies for which they are used?

Since its inception in 1921, the agency has saved taxpayers billions of dollars—more than $200 billion by some accounts. It was the GAO that found the money trail in the Iran-Contra scandal. After uncovering the HUD scandal, the agency went to work on the Department of Defense, and found $36 billion in supplies not needed to satisfy current operations of war reserves. GAO also turned the spotlight on wasteful Medicare reimbursement practices, including hospitals whose physical therapists billed as much as $600 an hour even though their salaries were as low as $20 an hour.

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This is definitely not the time to shackle Congress' most effective fiscal watchdog.

Mr. GLENN. Madam President, it just does not make any sense that we are going to cut GAO at a time when we need their investigations more than ever.

It came as a big surprise to me back several years ago, as chairman of the Governmental Affairs Committee, to learn that the departments and agencies of Government are not required to do a bottom-line audit every year, as any business would have to do. The biggest spending organization in the world, the U.S. Government, and we are not required to do any audits at the end of the year.

We worked over several years putting together legislation. It was put together with the assistance of Dick Darman in the White House, during the years when he was head of OMB, and with Charles Bowsher, who is the Comptroller General, and we put together what we called the Chief Financial Officer Act, which has been in effect since 1990.

What does that do? It requires a bottom-line audit every year of every Department, every agency. We started GAO out auditing just three pilot projects trying to see whether we could get audits or not and what kind of shape they would be in. Nobody is passing, at this point, what in business would be called a certified audit. It will be a number of years before we get to that point. But who is required to analyze those new activities that we have put on every Department, every agency of Government to make sure that they are truly doing an audit—in other words, checking the audits, making sure the bottom-line audit is valid? The GAO, the General Accounting Office. That is one of their assigned jobs.

We are assigning them new roles all the time, and yet, at the same time, we are saying in addition to what they are already cutting down, 12 to 15 percent, we whack them out one-fourth this year when we need more accounting capability, not less.

I wish we could go not just to three agencies of the Government or Departments of Government and say, ''Yes, the GAO is coming over to audit you and you better get your books in order.'' I wish we could go the whole length and breadth of Government. We are going to do that next year, and they are phasing it in slowly and doing a good job of phasing it in slowly, because they do not have the resources to go further into this and do it more rapidly.

It is unbelievable some of the things we found in our hearings going on over at the Pentagon, as far as accounting. GAO found across the whole length and breadth we have 200 different accounting systems, most of which cannot talk to each other on computers. The Pentagon alone has 160 different accounting systems; the Army has 43 different accounting systems. GAO is working closely with the Pentagon, with John Hamre, the comptroller over there, trying to make some sense out of this and trying to get reports and combine some of these systems so that we can know what happens to the money that we appropriate for the Pentagon. I use that as just one example.

I think it was $32 billion in unmatched disbursements, for instance, where they are just sort of written off. We hope they were all valid payments, but we could not really document what those payments were, whether they were as valid as they should be or not.

We did not have the paperwork trail there to do it. They are helping the Pentagon upgrade their system so we can get that kind of an audit trail every single year, not just once in a great while. Yet, at the same time, we are talking about cutting their funding back by a fourth when they are on the downswing now.

It was rare we used to hear any comment about problems with the GAO, and I know, as chairman of the Governmental Affairs Committee, where I heard the first major complaints. I think maybe this is where some of the problems started with the reputation of GAO in the Senate at least.

I know that the editorial I read a moment ago puts some of the problem over in the House on what they did in uncovering the House bank scandal. But in the Senate, everybody went along thinking GAO was doing a good job, which they were, up until President Bush was elected. And during that transition period is when the GAO took it upon themselves to issue the transition reports, giving advice, which was not solicited by the new administration at that time.

These were transition reports that called on GAO's background and their experience in these different areas as to where they saw some of the major problems in Government. This was unsolicited by the new administration. We had very few Senators here, but some—I still have one of the letters in my file that was just caustically critical of the General Accounting Office for going outside what this particular Senator saw as their proper role of doing only reports that we had requested specifically from here, committee chairmen or individuals, of course. But they voluntarily made these transition reports.

If that affronted some people, I am sorry it did, but it certainly did not affront me and it would not have affronted me had it been a Democratic administration coming in.

I do not think there is any agency of Government—no one certainly at the congressional level—to give us advice whose views go clear across the length and breadth of Government, all the way across, and is more qualified to give advice than the General Accounting Office.

I know if it had been a Democratic administration coming in, I would have welcomed those transition reports to give a new administration some guidance. Instead of that, their initiative, which they took on their own, seemed to have affronted some people here. And we heard continual criticism of the General Accounting Office ever since that time. Even up to and including one of the reported suggestions after the Republican conference made their suggestions on cutbacks at 25 percent, one of the Senators was quoted as saying he thought they should be cut back 50 percent. That would virtually do away with the fine job the General Accounting Office does for the Congress.

So I hope that we can think about this very carefully as to what we are doing when we cut funds back for the General Accounting Office. I hope they can be permitted not to take a one-quarter cut in this year, all in this year. That would decimate them. It would interrupt all their programs. They are on a reduction of about one-fourth of their work force right now. It started back 2 years ago and will be completed by the end of 1997. That is their target for this, and they are on schedule for it right now.

They can go that kind of reduction in an orderly fashion and accomplish the same thing if just given the time to do it.

I realize the efforts that we try to put forth around here to cut the budget, but if we are cutting the budget with regard to the General Accounting Office to that level, I think we are making a very, very, major mistake and one that we will regret.

If we do not have them, who are we to use for investigations that they have done in the past? I have used them. As chairman of the Governmental Affairs Committee, I used them for quite a number of different projects.

One I will mention. We are all concerned about the nuclear waste across the country, nuclear waste out of the nuclear weapons production program across the country that went for so many years without anybody even looking at it.

Back in 1985, I was at Fernald in Ohio. People wanted me to come out there, and it was one of the first steps in the nuclear weapons process, a processing plant at Fernald, and they felt there were problems there with waste.

I went out not knowing quite what I would find. The situation was worse than I thought it was. I went to work on that.

Then we asked the General Accounting Office to do a study of the site, which they did. I thought it could not possibly be this bad all over the whole country at the 17 major sites in 11 different States that were part of that nuclear weapons process. It turned out we asked GAO to do studies in some of the other areas, which they did, and what did they find? They found what I had run into at Fernald was only the starting point. What was out there across the whole nuclear weapons complex was a hideous ignoring of what had been going on all during the cold war as we fought to get fissile material and nuclear weapons produced as fast as we possibly could.

We had been just ignoring the waste. Everybody was so concerned, including me, including Members of this body, including most Americans, we were concerned, ''The Russians are coming, the Russians are coming.'' We have to get those nuclear weapons out there fast.

What are we going to do with the waste? Put it out behind the plant and we will deal with that later. That is what we did. This ''out behind the plant and deal with it later'' was all the nuclear waste that we are now going to have to spend hundreds of billions of dollars to clean up.

The organization that has given the best definition of that whole problem all across the country is the General Accounting Office. I add this. Back then, when we first ran into this and had the first GAO reports, we asked for estimates from the Department of Energy as to how much they thought it was going to cost to clean up this whole thing out across the country. This was in about early 1986. They estimated it was going to cost $8 to $12 billion to clean these places up.

Better defining as GAO went through this showed in about 2 years it would cost closer to $100 billion. That was our estimate for several years. Then the cost went up, through better refining of the data, to about $200 billion and 20 to 30 years to do the cleanup.

Now this past week the Department of Energy has finally estimated that depending on how clean we want to make the sites, the cost will be $200 to $375 billion. Some can be done in 20 to 30 years, and some of it may take as long as 75 years as we try to learn how to do it.

GAO is the one who has defined most of this problem and pointed it out. They deserve a lot of credit for having done that.

We could go on. I could talk all night here, all afternoon and all evening about what has happened in GAO on the different projects and what we have been able to save. They have gotten back so many times their cost, the cost of having GAO so many times.

I indicated just my own personal case of requests for information that has resulted in several billion being saved on different accounts that we can document. This $200 billion I said they saved since about 1985, I believe it was, they can document. They have follow-up activities that show. These are not some wild pie-in-the-sky estimates to make them look good. They document this with follow-up review procedures to see how much has actually been saved, and $200 billion over the last 10 years is an enormous savings. Yet at the same time we are talking about whacking them by one-quarter in addition to the reduction they are already making. That would be the most false economy I can think of if we went through with that.

Madam President, I have spoken longer than I usually speak on the floor today, but I think these are very important matters. We talk about pulling back money for the IRS at a time when they are getting their TSM, their tax system modernization in place. That is a mistake. They are getting back far more than what it costs.

If we cut them down on their compliance activities, their follow-up on tax returns, their follow-up to make sure that everybody is paying their fair share, their follow-up to make sure the IETC—the earned income tax credit—is not given incorrectly to the wrong people, when we start cutting back on activities like that, that is a mistake.

I personally would like to see funding increased for GAO and increased for IRS because their track record is that they are getting back more than those additional dollars would cost.

I hope we are not going to, in the interests of balancing the budget here, make some false economies here that will cost more in the long run than it would to fully fund these agencies as requested right now.

I appreciate the consideration of my colleagues. I yield the floor.

BUDGET PROCESS STATUS

Mr. GREGG. Madam President, I wish to address the underlying legislation and also generally about how we stand in this budget process, because obviously this piece of legislation has an impact on the budgets generally.

We are about to break here for a couple of weeks, and when we return from this break, we will have a chance to debate the basic budget resolution before the Congress. This rescission package which we are presently taking up is sort of a precursor to that whole debate, the budget resolution of the Congress.

What it all comes down to is an issue of how we preserve the American dream for our children. What this debate is about is whether or not we are going to start putting fiscal discipline into the Congress and into the Federal Government in a manner which will allow Members to avoid an economic catastrophe which is looming over the horizon and which, unfortunately, our children will be the recipient of.